6. If you were found guilty after a plea of not guilty, check whether that finding was made by

   (a) a jury X

7. Did you appeal from the judgment of conviction or the imposition of sentence? Yes

8. If you answered "yes" to (7), list

   (a) the name of each court to which you appealed:

      1. Wisconsin Supreme Court

   (b) the result in each such court to which you appealed:

      1. Judgment Affirmed

   (c) The date of each such result:

      1. October 31, 1969

   (d) if known, citations of any written opinion or orders entered pursuant to such results:

      1. Wisconsin Supreme Court No. State 26, August Term, 1969

      11. 44 Wis. 2d 486 (1969)

      111. 171 NW 2d 349

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

   (a) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. 77626, Branch II, County Court, Fond du Lac County, Wisconsin, based upon evidence obtained in an illegal and unreasonable search and seizure, conducted on September 12, 1967 of a 1967 Ford Thunderbird automobile, without a search warrant. This violated Dombrowski's rights to be free of illegal and unreasonable searches and seizures and to due process of law under the Fourth, Fifth and Fourteenth Amendments to the United States Constitution.

(b) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. 77626, Branch II, County Court, Fond du Lac County, Wisconsin, based upon evidence obtained in an illegal and unreasonable search and seizure, conducted on September 12, 1967, of the Bernard Dombrowski farm, without a search warrant, which was conducted as a result of an illegal and unreasonable search and seizure set forth in 10(a) and as a result of the divulgence of privileged and confidential communication with his attorney. This violated Dombrowski's rights to be free of illegal and unreasonable searches and seizures, to due process of law and to the effective assistance of counsel under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

(c) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. 77626, Branch II, County Court, Fond du Lac County, Wisconsin, based upon evidence obtained in an illegal and unreasonable search and seizure, conducted on September 12, 1967 of a 1960 Dodge automobile belonging to petitioner, without a search warrant, which was conducted as a result of illegal and unreasonable search and seizures set forth in 10(a) and 10(b) above and a result of the divulgence of privileged and confidential communications with his attorney. This violated Dombrowski's rights to be free of illegal and unreasonable searches and seizures, to due process of law and to the effective assistance of counsel under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

(d) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. 77626, Branch II, County Court, Fond du Lac County, Wisconsin, based upon evidence obtained in an illegal search and seizure, conducted on September 12, 1967 of a 1960 Dodge, pursuant to a search warrant which was defective in that it was not supported by probable cause, was the result of earlier illegal searches and seizures set forth in 10(a) (b) and (c) and the divulgence of privileged and confidential communications, was defective in that said search warrant failed to particularly describe the things to be seized and was improperly executed and returned. This violated Dombrowski's rights to be free of illegal and unreasonable searches and seizures, to due process of law and to the effective assistance of counsel under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

(e) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. 77626, Branch II, County Court, Fond du Lac County, Wisconsin, based upon evidence obtained in an illegal search and seizure, conducted on September 13, 1967 of his 1960 Dodge by Cleon Mauer of the State Crime Laboratory, without a search warrant, which was conducted as a result of illegal and unreasonable searches and seizures set forth in 10(a) (b) (c) and (d) above and as a result of the divulgence of privileged and confidential communications between Dombrowski and his attorney. This violated Dombrowski's rights to be free of illegal and unreasonable searches and seizures, to due process of law and to the effective assistance of counsel under the Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

(f) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. 77626, Branch II, County Court, Fond du Lac County, Wisconsin, based upon evidence, to-wit: the testimony of Clyde Schloemer, Dombrowski's former attorney, given on July 11, 1968, as to certain privileged and confidential communications between Dombrowski and his attorney on September 12, 1967, over the objection of both Schloemer and Dombrowski. This violated Dombrowski's rights to the effective assistance of counsel, to the privilege against self-incrimination and to due process of law under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

(g) The petitioner, Dombrowski, is being unlawfully held in custody as a result of a conviction in Case No. Wisconsin, based upon the denial to Dombrowski of a fair trial and due process of law by the prosecutor's inflammatory and prejudicial comments and remarks, including comment upon Dombrowski's exercising his privilege against self-incrimination. This violated Dombrowski's rights to a fair trial, to due process of law, to his privilege against self-incrimination and to a fair and impartial jury deliberation under the Fifth, Sixth and Fourteenth Amendments to the United States Constitution.

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) On September 11, 1967, the petitioner, Chester Dombrowski, while driving a rented 1967 Ford Thunderbird automobile was involved in an accident, north of Kewaskum, Washington County, Wisconsin, in which

his car left the road and became disabled. Dombrowski was injured in the accident. He obtained a ride into Kewaskum, Wisconsin, from a passing motorist. Dombrowski was returned from Kewaskum to the accident scene by two Washington County Deputy Sheriffs. One Officer searched the vehicle and found nothing. While at the accident scene the car was locked and the deputies had the car towed by a wrecker to the Honeck Garage in Kewaskum. The deputies took Dombrowski to the Sheriff's Office in West Bend, Wisconsin, and after converring in person with Aldwin Seefeldt, Assistant District Attorney, placed Dombrowski under arrest for drunken driving. Dombrowski was then taken to the West Bend Police Station for a breathalyzer test and then finally Dombrowski was taken to St. Joseph's Hospital, West Bend, Wisconsin, where he was seen by a doctor and hospitalized for his injuries. About two and one-half (2-1/2) hours after Dombrowski's arrest, one of the deputy sheriffs, on September 12, 1967, traveled from the hospital at West Bend, Wisconsin, to Honeck's Garage at Kewaskum, Wisconsin, and conducted a detailed search of the vehicle. The deputy seized certain articles from the trunk of the car which produced leads to other evidence. The articles seized were subsequently admitted into evidence against Dombrowski. This search of the disabled 1967 Ford Thunderbird was conducted without a search warrant and without the knowledge or consent of Dombrowski.

(b & c) On September 12, 1967, as a result of the articles seized in the search of the 1967 Ford Thunderbird automobile, sheriff's investigators went to Dombrowski's guarded hospital room to interrogate him. Dombrowski asked to confer with an attorney. He subsequently conferred with Attorney Clyde Schloemer.

After the conference, Schloemer left the hospital room and had the investigator and District Attorney meet with him in the hospital reception area and advised them that his client believed there was a body lying near the family picnic area on his brother's farm. Mr. Dombrowski had not consented to the divulgence of any confidential and privileged communication between him and his counsel and did not make any knowing or intelligent waiver of his federal constitutional right to the effective assistance of counsel.

On the same day, as a result of the information obtained, Washington and Fond du Lac County law enforcement authorities accompanied by a legal associate of Mr. Schloemer immediately went to the farm and, without a search warrant, conducted a search of the picnic and other areas of the Dombrowski farm. They also conducted a search without a warrant of a disabled 1960 Dodge automobile. They obtained evidence which produced additional leads and which was admitted into evidence in Dombrowski's trial.

On September 13, 1967 at about 9:30 a.m. a deputy sheriff applied for a search warrant to search the Dombrowski farm. The application for search warrant was obviously based upon earlier illegal and unreasonable searches and seizures and the divulgence of confidential and privileged communication between Dombrowski and his attorney. The application lacked probable cause. It was based in part upon hearsay which was not corroborated or shown to be reliable.

(d) At about 8:00-8:15 p.m. on September 12, 1967, the Sheriff's investigator applied for a search warrant to again search the 1960 Dodge automobile. The applica-

tion for the search warrant lacked probable cause, was based upon unknown communications by the deputy sheriff and the magistrate which are not of record, hearsay which was not corroborated or shown to be reliable and information obtained from and as a result of the prior searches and the disclosure of privileged communications by Attorney Schloemer as more fully appear by said applications. The warrant was issued without particularly describing the things to be seized, as appears from the warrant. The undersheriff conducted a further search of the vehicle and seized items of evidence. The required return failed to disclose material items seized during the search.

(e) Subsequently on September 13, 1967, Mr. Cleon Mauer of the State Crime Laboratory, without a search warrant, conducted a further search of the disabled 1960 Dodge automobile. This search was based upon the illegal and unreasonable searches and seizures previously conducted and the divulgence of privileged and confidential communications between Dombrowski and his attorney. He seized additional articles of evidence which were admitted into evidence during Dombrowski's trial.

(f) On July 11, 1968 during the course of Dombrowski's trial, his former attorney, Clyde Schloemer, called as a witness for the State, testified to certain confidential and privileged communications between him and Dombrowski, over the objection of both Schloemer and Dombrowski.

(g) On July 18, 1968, during the prosecutor's closing argument, the District Attorney, Alexander P. Semenas, made inflammatory remarks describing Dombrowski as

vicious and violent and calling for Dombrowski's extermination and commented upon Dombrowski's exercising his federal constitutional right against self-incrimination.

12. Prior to this petition have you filed with respect to this conviction

(a) any petitions in any State court? No

(b) any petitions in any Federal Court for habeas corpus? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No

(d) any other petitions, motions or applications in this or any other court? Yes

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application

(a) the specific nature thereof:

1. Motion for Rehearing

(b) the name and location of the court in which each was filed:

1. Wisconsin Supreme Court - Madison, Wisconsin

(c) the disposition thereof:

1. Denied

(d) the date of each such disposition:

1. December 19, 1969

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

1. No written opinion filed

14. Has any ground set forth in (10) been previously presented to this or any other court, state or federal, in any petition, motion or application which you have filed? Yes

15. If you answered "yes" to (14), identify

(a) which grounds have been previously presented:

1. All of them

(b) the proceedings in which each ground was raised:

1. Pre-trial Motions Appeal

11. Trial Motion for Rehearing

111. Post-conviction Motions

17. Were you represented by an attorney at any time during the course of

(a) your plea to the charge in the trial court? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

18. If you answered "yes" to one or more parts of (17), list

(a) the name and address of each attorney who represented you:

1. David E. Leichtfuss - throughout entire proceedings
   324 East Wisconsin Avenue, Milwaukee, Wis. 53202

11. Robert N. Gordon -
   6th and Hickory Streets, West Bend, Wis. 53095

(b) the proceedings at which each such attorney represented you:

1. In all proceedings

11. Pre-trial motions, motions, post-conviction motions

19. If you are seeking leave to proceed in forma pauperis, have you completed the sworn affidavit setting forth the required information (see instructions, page 1 of this form)? Yes

/s/ Chester J. Dombrowski
Signature of Petitioner
Chester J. Dombrowski

Chester J. Dombrowski, being first sworn under oath, presents that he has subscribed to the foregoing petition and does state that the information therein is true and correct to the best of his knowledge and belief.

/s/ Chester J. Dombrowski
Signature of Petitioner
Chester J. Dombrowski

(Jurat omitted in printing.)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

RETURN TO PETITION FOR HABEAS CORPUS, Filed March 25, 1970. [Document No. 4.]
[Caption omitted in printing.]

The respondent above named by Robert W. Warren, Attorney General, and William A. Platz and David C. Mebane, Assistant Attorneys General, his attorneys, for his return to the petition for a writ of habeas corpus admits, denies and alleges as follows:

1. ADMITS that the petitioner is in the custody of respondent pursuant to a judgment and commitment of a court of competent jurisdiction, namely, Branch II of the County Court of Fond du Lac County, Wisconsin, wherein petitioner was convicted of the crime of murder in the first degree and sentenced to serve life imprisonment in the Wisconsin State prison as more fully appears from the certificate of conviction and sentence, a true copy of which marked Exhibit A is hereto attached and made part hereof.

2. ADMITS all the allegations contained in paragraph 7, 8 and 9 of the Petition.

3. ALLEGES that the facts and law are as set forth in the published opinion of *State of Wisconsin v. Chester J. Dombrowski* State No. 26, 44 Wis. 2d 486 (1969) 171 N.W. 2d 349, a copy of which marked Exhibit B is attached hereto and made part hereof.

4. DENIES the allegations contained in paragraphs 10(a) and 10(b) of the petition.

5. DENIES the allegations of paragraph 10(c) of said petition, and DENIES the petitioner has exhausted state

remedies with reference to the allegations of paragraph 10(c), since said allegations were not included in petitioner's appeal to the Wisconsin Supreme Court on appeal from judgment or motion for rehearing.

6. DENIES the allegations contained in paragraphs 10(d), 10(e), 10(f) and 10(g).

7. DENIES the allegations and facts contained in paragraph 11 in its entirety and respectfully refers the Court to the facts set forth in Exhibit β attached hereto and made part hereof.

8. ALLEGES that he lacks knowledge and information sufficient to form a belief as to the truth of the facts contained in paragraph 12 of the Petition.

9. ADMITS the allegations and facts of paragraph 13 of the Petition.

10. ADMITS the allegations of paragraph 14 of the Petition.

11. DENIES the allegations of paragraph 15 that all grounds of paragraph 10 of the Petition had previously been presented to a State Court, and specifically DENIES that the petitioner has exhausted state remedies with reference to the allegations of paragraph 10(c) since said allegations were not included in the petitioner's appeal to the Wisconsin Supreme Court (Exhibit B) or motion for rehearing.

12. ADMITS the allegations of paragraph 17 and 18 of the Petition.

13. ALLEGES that he lacks knowledge and information sufficient to form a belief as to the truth of the facts contained in paragraph 19 of the Petition.

Dated at Madison, Dane County, Wisconsin, this 23d day of March, A.D. 1970.

ROBERT W. WARREN
Attorney General

WILLIAM A. PLATZ
Assistant Attorney General

/s/ David C. Mebane
DAVID C. MEBANE
Assistant Attorney General

Attorneys for Respondent

Post Office Address:

114 East, State Capitol
Madison, Wisconsin

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHESTER J. DOMBROWSKI,
Petitioner,

vs. No. 70-C-129

ELMER CADY, Warden,
Respondent.

ORDER FOLLOWING CONFERENCE WITH THE COURT. Filed April 10, 1970. [Document No. 6.]

The parties having appeared by their respective counsel at a pre-trial conference in the above matter held on April 10, 1970, pursuant to notice, and said counsel having so agreed;

IT IS ORDERED: That the subsequent course of this action shall be governed by the following stipulations unless modified by the court to prevent manifest injustices;

1. The evidentiary hearing, if any, will be limited to proof relating to the allegations of Paragraph 10 (c) of the petition. Counsel for the petitioner will notify the court and opposing counsel whether he believes such a hearing to be necessary by April 17, 1970, and, if he desires a hearing, will include in his notification an identification of witnesses to be called and an estimate of the length of the hearing. The respondent does not waive his position that the petitioner has failed to exhaust his State remedies as to Paragraph 10 (c).

2. The entire State court record in the above matter, including briefs filed in the Wisconsin Supreme Court and the records relating to pre-trial requests for a writ of prohibition, will be filed by the respondent as soon as possible, together with a proposed stipulation as to the accuracy and completeness of that record.

3. Petitioner's brief in support of his petition will be filed not later than June 10, 1970; an evidentiary [answering] brief will be filed within thirty days after receipt by the respondent of petitioner's brief; a reply brief will be filed within two weeks after receipt by the petitioner of the answering brief.

Dated, Milwaukee, Wisconsin, this 10th day of April, 1970.

/s/ Robert E. Tehan
U. S. District Judge.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STIPULATION AS TO CONTENTS OF RECORD. Filed June 5, 1970. [Document No. 7.]
[Title omitted in printing.]

It is hereby stipulated that the following five exhibits attached hereto and marked Exhibit A, Exhibit B, Exhibit C,

Exhibit D, and Exhibit E shall constitute the entire state court record for determination of the above entitled matter herein.

It is hereby further stipulated that said Exhibits A, B, C, D, and E are accurate and complete insofar as necessary for determination of the above described matter.

/s/ David C. Mebane
DAVID C. MEBANE
Assistant Attorney General

Attorney for Respondent

/s/ David E. Leichtfuss
DAVID E. LEICHTFUSS

Attorney for Petitioner

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

CHESTER J. DOMBROWSKI,
Petitioner,

v. No. 70-C-129

ELMER O. CADY, Warden,
Respondent.

DECISION AND ORDER DENYING PETITION FOR WRIT OF HABEAS CORPUS. Filed December 2, 1970. [Document No. 9.]

Mr. Dombrowski was convicted by a state court on July 18, 1968, of the first-degree murder of Herbert L. McKinney and presently is serving a sentence of life imprisonment in the state prison at Waupun. The petitioner's conviction was affirmed by the Wisconsin supreme court in State v. Dombrowski, 44 Wis.2d 486, 171 N.W.2d 349 (1969). In this petition for a writ of habeas corpus, Mr. Dombrowski contends that certain of the evidence used to convict him was acquired by infringement of his fourth amendment rights.

On the evening of September 11, 1967, the petitioner was involved in an automobile accident near Kewaskum, Wisconsin, while driving a rented 1967 Thunderbird automobile. A passing motorist gave him a ride into Kewaskum where the petitioner called the county sheriff's office to report the accident. Mr. Dombrowski returned to the accident scene accompanied by two deputy sheriffs. The deputies briefly searched the car and then had it towed to a garage in Kewaskum. The petitioner was taken to the sheriff's office in West Bend, Wisconsin, where he was placed under arrest for drunken driving.

Approximately two and one quarter hours after the petitioner's arrest, deputy William Weiss went to the garage in Kewaskum and, without a search warrant or Mr. Dombrowski's consent, inspected the inside of the Thunderbird, including the trunk area. There he found evidence which ultimately contributed to Mr. Dombrowski's conviction for murder.

Testimony at the trial disclosed that Mr. Dombrowski had told the arresting deputies several times that he was an officer with the Chicago police department. Deputy Weiss testified that he understood that metropolitan police officers always carried their service revolvers with them. On the basis of this belief, the deputy stated that he returned to the locked Thunderbird to look for the revolver.

In affirming the petitioner's conviction, a divided Wisconsin supreme court concluded that the inspection of the Thunderbird by deputy Weiss was not a "search", citing definitions found in Haerr v. United States, 240 F.2d 533 (5th Cir. 1957), and Edwards v. State, 38 Wis. 2d 332, 156 N.W.2d 397 (1968). The majority concluded that deputy Weiss' inspection was made within a reasonable time after the car was towed to the garage, was done with the purpose of protecting Mr. Dombrowski's property (the service revolver), and was not made as part of a search for incriminating evidence.

In Preston v. United States, 376 U.S. 364 (1964), the petitioner and his companions were arrested for vagrancy when they could give no satisfactory explanation of their activities. They were taken to a police station; their automobile, which was not searched at the time of the arrest, was driven to the station by a police officer and then towed to a garage. A little later, several police officers went to the garage and there searched the automobile without a warrant, finding evidence in the trunk that was ultimately used to convict the petitioner and the others for conspiracy to rob a federally insured bank.

In reversing the convictions, the supreme court stated, in part, at page 366:

> "Our cases make it clear that searches of motorcars must meet the test of reasonableness under the Fourth Amendment before evidence obtained as the result of such searches is admissible. E.g., *Carroll v. United States*, 267 U.S. 132 (1925); *Brinegar v. United States*, 338 U.S. 160 (1949)."

The court continued at page 367:

> "The rule allowing contemporaneous searches is justified, for example, by the need to seize weapons and other things which might be used to assault an officer or effect an escape, as well as by the need to prevent the destruction of evidence of the crime—things which might easily happen where the weapon or evidence is on the accused's person or under his immediate control. But these justifications are absent where a search is remote in time or place from the arrest. Once an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest."

The respondent relies on Harris v. United States, 390 U.S. 234 (1968). In *Harris*, the petitioner's automobile was seen leaving the scene of a robbery; the vehicle was traced and the petitioner was arrested when he was seen entering it near his home. Following a quick search of the car, the arresting officer took the petitioner to the police station and the automobile was impounded as evidence.

A police department regulation required the search of all impounded vehicles, the inventory and removal of all valuables from them, and the attachment of a property tag detailing the circumstances of the impounding. As the arresting officer opened the passenger's door on the petitioner's automobile, he saw a registration slip belonging to the robbery victim on the metal strip over which the door closed.

The court held that the discovery of the registration slip was not the result of a search. Noting that "the discovery of the card was . . . the result . . . of a measure taken to protect the car while it was in police custody", the court went on to state that "Nothing in the Fourth Amendment requires the police to obtain a warrant in these narrow circumstances." Other cases with similar holdings are Creighton v. United States, 406 F.2d 651 (D.C. Cir. 1968), and United States v. Blackburn, 389 F.2d 93 (6th Cir. 1968).

In Cooper v. California, 386 U.S. 58 (1968), the defendant's automobile was impounded following his arrest on a narcotics charge. About a week later, the automobile was searched without a warrant for narcotics. The court found no illegality in the search on the basis that the police had lawful custody of the car and the search was closely related to the reason for the arrest and the reason the automobile had been impounded. *Preston* was distinguished on the basis that in that case there had been no relationship between the arrest, the reason for the seizure of the vehicle, and the reason for the search.

In Williams v. United States, 412 F.2d 729 (5th Cir. 1969), the court stated at page 733:

> "*Preston* and *Cooper* are somewhat difficult of analysis because they represent two distinct approaches to the same kind of case. In *Preston*, the Court tacitly assumed, probably because of the way the case was argued, that the search would be unlawful if not incident to arrest. On the basis of the conclusion that '[o]nce an accused is under arrest and in custody, then a search made at another place, without a warrant, is simply not incident to the arrest,' 376 U.S. at 367, 84 S.Ct. at 883, the search was held unlawful. In *Cooper*, on the other hand, it could not even be argued that the search was incident to a valid arrest, but rather than confine its attention to that question, as it had done in *Preston*, the Court went on to consider the reasonableness of the search under all the circumstances. As we read the opinion, the Court held that any warrantless search is to be judged by its reasonableness under all the circumstances. In taking this approach, the Court adopted as its test a dictum from United States v. Rabinowitz, 1950, 339 U.S. 56, 66, 70 S.Ct. 430, 435, 94 L.Ed. 653: 'The relevant test is not whether it is reasonable to procure a search warrant, but whether the search was reasonable' (quoted in *Cooper* at 386 U.S. 62, 87 S. Ct. 791)."

In my opinion, *Harris* is reasonably analogous to the case at bar. Deputy Weiss testified that it was his department's "standard procedure" to look for a service revolver in a situation like the one presented. Deputy Boudry also testified that he had looked for the missing gun at the scene of the accident. Although the line is a narrow one, I conclude that the examination of the car at the garage was not a search in the *Preston* sense, but rather it was an inspection designed

to locate an article of value, to be protected by those responsible for its custody. This was not a search for incriminating evidence and is constitutionally permissible under *Harris*.

Under the circumstances of the case at bar, I conclude that the examination of the Thunderbird by deputy Weiss was reasonable. At the time of this inspection, it appears that there was no suspicion on the part of the officers of any other misconduct by the defendant; the deputy was interested in protecting the petitioner's property. In seeking to locate the service revolver, the deputy came upon blood-splattered articles which he could not be expected to ignore; this distinguishes the case at bar from the case in which the officers, under a guise of making a belated "custody search", attempt to buttress their having arrested the defendant. See my dissent in State v. Stevens, 26 Wis.2d 451, 465, 132 N.W.2d 502, 509 (1965).

The petitioner also advances various other grounds, none of which reaches such constitutional proportions to warrant granting of the writ.

Therefore, IT IS ORDERED that Mr. Dombrowski's petition for a writ of habeas corpus be and hereby is denied.

Dated at Milwaukee, Wisconsin, this 2nd day of December, 1970.

/s/ Myron L. Gordon
U. S. District Judge

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

STIPULATION THAT PART OF RECORD BE RETAINED IN DISTRICT COURT. Filed January 20, 1917. [Document No. 14.] [Title omitted in printing.]

It is hereby stipulated by and between the parties by their respective counsel that, pursuant to Rule 11 (f), Federal Rules of Appellate Procedure, that Exhibits A, B, C, D and E of the record shall be retained in the District Court unless hereafter the United States Court of Appeals for the Seventh Circuit shall order or any party shall request their transmittal. Exhibits A, B, C, D and E shall nevertheless be a part of the record on appeal for all purposes.

Dated: January 19, 1971

/s/ David E. Leichtfuss
David E. Leichtfuss

/s/ William J. Mulligan
William J. Mulligan

Attorneys for Petitioner-Appellant

Robert Warren
Attorney General

By /s/ Mary V. Bowman
Assistant Attorney General

Attorneys for Respondent-Appellee

OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT REVERSING THE ORDER OF THE DISTRICT COURT. Filed June 2, 1972.

This opinion is printed in the Appendix to the Petition for Writ of Certiorari at pages 101-112.

ORDER OF THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT DENYING REHEARING. Filed July 24, 1972.

This order is printed in the Appendix to the Petition for Writ of Certiorari at page 113.

FOLDOUT(S) IS/ARE TOO LARGE TO BE FILMED

STATE OF WISCONSIN
FOUN DU LAC COUNTY
COUNTY COURT BRANCH II

SEARCH WARRANT for 1967 Ford Thunderbird, dated September 12, 1967, and filed September 14, 1967.

WHEREAS, Raymond Howard has this day complained to the said Court upon oath that on the 12th day of September, 1967, in the County of Fond du Lac, there is now located One (1) Automobile, to-wit: 1967 Ford Thunderbird, License No. Illinois HC8318, which may be the automobile used in the commission of a crime or may constitute crime; to-wit: murder, committed in violation of Section 940.01 (1) of the Wisconsin Statutes and prayed that a search warrant be issued to search the above stated vehicle.

NOW, THEREFORE, in the name of the State of Wisconsin, you are commanded forthwith to search the said vehicle stated herein and if the same articles of evidence of crime are found therein, to bring the same before the Court and return this warrant within 48 hours before the said Court, to be dealt with according to law.

DATED this 12th day of September, 1967. *8:15 P.M.*

/s/Hazen W. McEssy
Honorable Hazen W. McEssy
County Court Branch II
Fond du Lac County
Fond du Lac, Wisconsin

STATE OF WISCONSIN
FOND DU LAC COUNTY
COUNTY COURT BRANCH II

INDORSEMENT ON WARRANT FOR 1967 FORD THUNDERBIRD AND RETURN OF OFFICER, dated September 14, 1967, and filed with Fond du Lac County Court on September 14, 1967.

INDORSEMENT ON WARRANT

RECEIVED BY ME *September 12,* 1967, at *8:15* o'clock *P.M.*

/s/ Raymond Howard

RETURN OF OFFICER

I hereby certify that by virute of the within warrant, I searched the within named premises and found the following things:

On the 1967 Ford Thunderbird, Illinois No. HC83108. We found an application or a receipt where the same party, Chester Dombrowski who owns the Dodge, (1960) has made this application with Hertz Rent-A-Car at O'Hare Field, Chicago, Illinois:

and have the same now in my possession subject to the direction of the Court.

DATED THIS *14* day of September, 1967.

/s/ Raymond Howard

STATE OF WISCONSIN
FOND DU LAC COUNTY
COUNTY COURT BRANCH II

SEARCH WARRANT FOR FARM, FARM BUILDINGS AND HOME, dated September 13, 1967, and filed with Fond du Lac County Court on September 14, 1967.

Whereas, Dan Sondergard has this day complained to the said Court upon oath that on the *13* day of September, 1967, in said County, in the Town of Auburn, in and upon certain premises more particular known as the farm, farm buildings and home owned or believed to be owned by C. Dumbrowski and B. Dombrowski and partly occupied by C. Dombrowski and D. Dombrowski, there are now believed to be located and concealed certain things, to-wit: Blunt instrument of some type, some Caliber Rifle, or a .38 Caliber Revolver, and the affiant also observed through the windows of the house stains which appeared to be blood stains, which were or may be those that were used, or caused in the commission of the crime or may constitute a crime: to-wit: murder, comitted in violation of section 940.01(1) of the Wisconsin Statutes and prayed that a search warrant be issued to search said premises for said property.

NOW, THEREFORE, in the name of the State of Wisconsin you are commanded forthwith to search the said premises for said things, stated in and if the same or any portion thereof are found, to bring the same and the person in whose possession the same are found and return this warrant within 48 hours before the said Court, County Court Branch II, Fond du Lac County, Fond du Lac Wisconsin, to be dealt with according to law.

Dated this *13* day of September, 1967.

/s/ H. W. McEssy
H. W. McEssy, Judge
County Court Branch II
Fond du Lac, County, Wisconsin

STATE OF WISCONSIN
FOND DU LAC COUNTY
COUNTY COURT BRANCH II

INDORSEMENT ON WARRANT FOR FARM, FARM BUILDINGS AND HOME, AND RETURN OF OFFICER, Dated September 14, 1967, and filed with Fond du Lac County Court on September 14, 1967.

INDORSEMENT ON WARRANT

RECEIVED by me Sept. 13, 1967, at 10:00 A.M.

/s/ Dan Sondergard
Dan Sondergard

RETURN OF OFFICER

I hereby certify that by virtue of the within warrant, I searched the within named premises and found the following things:

(1) One sealed paper bag containing partial box of match books

(2) One sealed paper bag containing four stones

(3) One sealed paper bag containing partial box of Puritan 3 ox. cups

(4) One sealed paper bag containing empty beer can and one drinking glass

(5) One sealed screw-top jar containing stain recovered from floor

(6) One sealed screw-top jar containing stains recovered from floor

(7) One screw-top jar containing section of stained cloth recovered from mattress of bed

DATED this 14th day of September, 1967

/s/ Dan Sondergard
Dan Sondergard

RECEIPT FOR 1960 DODGE SEDAN. Filed with Fond du Lac County Court on September 14, 1967.

Fond du Lac County
Wisconsin

Office of the Sheriff
Safety Building, Fond du Lac, Wisconsin
54935
Dial 922-4141

Date September 14, 1967

Received of County Court Branch II:

One 1960 Dodge Sedan belonging to Chester Dombroski and one colored photograph of back seat with blood stains of 1960 Dodge.

/s/ Harry E. Rozek
Harry E. Rozek, Sheriff

Fond du Lac County, Wisconsin

RECEIPT FOR 1967 FORD THUNDERBIRD. Filed with Fond du Lac County Court on September 14, 1967.

Fond du Lac County
Wisconsin

Office of the Sheriff
Safety Building, Fond du Lac, Wisconsin
54935
Dial 922-4141

Date September 14, 1967

Received of County Court Branch II:

One 1967 Ford Thunderbird rented from O'Hare Field, Chicago, Illinois, by Chester Dombroski.

/s/ Harry E. Rozek
Harry E. Rozek, Sheriff

Fond du Lac County, Wisconsin

TRANSCRIPT OF HEARING ON REQUEST FOR ISSUANCE OF SEARCH WARRANTS for 1960 Dodge Sedan and 1967 Ford Thunderbird, held on September 12, 1967.

[1]

STATE OF WISCONSIN FOND DU LAC COUNTY
COUNTY COURT BRANCH II

In the matter of Request
for Issuance of Search Warrant

The following procedure was had before the Hon. H. W. McEssy, Judge of Fond du Lac County Court Branch II, in County Court II, in the city and county of Fond du Lac, Wisconsin, on the 12th day of September, 1967, at 8:02 o'clock P.M.

Alex Semenas, District Attorney, was personally present in Court.

Raymond Howard, Under-Sheriff, was personally present in Court.

COURT: This is in the matter of request for a search warrant, by the Sheriff of Fond du Lac County. The request is made in the belief that there is certain evidence that could be available at this time to the authorities in Fond du Lac County which may result in the apprehension of a person or persons who may have committed a murder in Fond du Lac County, or some other location in the State of Wisconsin; and whether or not the murder was committed in Fond du Lac County, a search warrant is requested by the Sheriff of Fond du Lac County, so that a proper

and thorough investigation can be made surrounding the circumstances which resulted in a body being found in Fond du Lac County. The Sheriff of Fond du Lac County and his assistants are of the opinion this man has been murdered. There are two motor vehicles involved. If there is evidence available to show there is presently a need for the issuance of a search warrant for the searching and impounding of said vehicles, the same may be issued.

At this time the Court will swear Under-Sheriff Raymond Howard, Under-Sheriff of Fond du Lac County.

[2] RAYMOND J. HOWARD, being first duly sworn, on oath, by the Court, testified as follows:

EXAMINATION:

BY THE COURT:

Q. What is your name? A. Raymond J. Howard.

Q. What is your address? A. 1410 East Pioneer Road, Fond du Lac, Wisconsin.

Q. What is your occupation? A. Under-Sheriff of Fond du Lac County.

Q. Were you formerly the Sheriff of Fond du Lac County? A. Yes, I was.

Q. As of this date, September 12, 1967, have you been involved in the investigation of an alleged murder in Fond du lac County? A. Yes, I have.

Q. Is it your desire — do you think it is in the best interests of the investigating authorities to examine certain automobiles? A. Yes, I do.

Q. What automobiles do you have in mind? A. I have a Dodge car at the Dombrowski farm — a Dodge car with Illinois license number LB428.

Q. Where is that car at this time? A. This is at the Dombrowski farm.

Q. Is it in Fond du Lac County? A. In Fond du Lac County.

Q. Why do you want to examine this automobile or search it? A. Because a man by the name of Chester Dombrowski had an accident just south of the Fond du Lac County line last night in which Washington County arrested him for drunken driving; and in so arresting him, they searched the car, and they found the floormat from the back of a Dodge car filled with blood and a raincoat, and a combination penknife and letter-opener; and while questioning the subject in Washington County, he demanded an attorney and said [3] A. (Ctd.) he would then give a statement. Afterwards, he would not give a statement, but the attorneys made remarks that there would be a body found on the brother's farm, which is located in Fond du Lac County.

Q. Brother of who? A. Brother of Chester Dombrowski.

Q. Is that farm in Fond du Lac County? A. The farm is in Fond du Lac County.

Q. Was there a body so found? A. There was a body so found with a person unidentified at this point, allegedly to be murdered, laying in the dump on this farm.

Q. Do you have photographs of the body? A. Yes, I have photographs of the body.

Q. Have the Court Reporter mark the photograph.

(Reporter marked photo of body as Plaintiff's Exh. 1)

Q. Now, in reference to Plaintiff's Exhibit 1, Mr. Howard, what does that indicate to you? A. That indicates to me there is a body laying in a pile of junk on the Dombrowski farm.

Q. Is that farm located in Fond du Lac County? A. Yes, it is.

Q. The body was found in Fond du Lac County? A. Yes, it was discovered by Officer Dan Sondergard.

Q. Now, where was the vehicle that you intend to investigate—to search? Where is that vehicle now? A. That vehicle is also on the Dombrowski farm, parked just northwest of the barn.

Q. Are there two vehicles or one vehicle that you want to search? A. We want to search two vehicles. We want to search the Rent-It car that is now in Kewaskum that was used in the accident; also, this Dodge that is on the Dombrowski farm.

Q. You desire to search those to ascertain whether or not there is [4] Q. (Ctd.) any evidence of murder or any other reason to believe there may be foul play in reference to the use of these two vehicles? A. Yes.

Q. Have the record show it appears to this Court that the Fond du Lac County authorities, particularly Raymond Howard, has certain evidence within his knowledge which would lead this Court to believe a Search Warrant should be issued to investigate two automobiles which may or may not be connected with the murder of the individual as yet not

identified. As to whether or not the man now held by the West Bend authorities—what is the name of the man in West Bend? A. Charles Dombrowski.

Q. — may be — Is Chester Dombrowski the man that owns these vehicles? A. He is the owner of the Dodge car that is on his brother's farm. The other vehicle is a Rent-It car from the city of Chicago.

Q. Where is this Dombrowski from? The man that is suspected of being involved in this matter? A. He is a police officer on the Chicago Police Department, living at 4854 North Monticella, Chicago.

Q. And this is his brother that lives in Fond du Lac County? A. No, his brother owns the farm in Fond du Lac County and he is also from Chicago; and the West Bend authorities called him long distance this A.M. and had permission to go on to the farm.

Q. And one of these automobiles is now in Washington County? A. In Washington County, yes, sir.

Q. The other vehicle is in Fond du Lac County? A. Yes.

Q. This Court hereby authorizes the issuance of a Search Warrant to Under-Sheriff Raymond Howard to search both vehicles and impound the same and make a report to this Court as to his findings within the next 48 hours. [5] Q. (Ctd.) Plaintiff's Exhibit 1 will be kept with the record and returned to the Court Reporter to be attached to the testimony which this Court directs be typed out, with the result being that the Sheriff — Raymond Howard, and any of his assistants that he calls to his help are entitled to search the vehicles mentioned in the testimony taken at this time.

[6]
STATE OF WISCONSIN)
FOND DU LAC COUNTY) ss.

I hereby certify that I have carefully compared the above and foregoing with my original notes taken at the hearing in the above entitled action, and I find the same to be a full, true, and correct transcript therefrom, containing all the testimony and proceedings had on said hearing.

Dated this 13th day of September, A.D., 1967

/s/ Elaine Retzleff
Elaine Retzleff, Official Reporter
for County Court, Branch No. II
Fond du Lac County, Wisconsin

[7] Plaintiff's Exhibit 1, Photograph of Body, omitted in printing.

TRANSCRIPT OF HEARING ON REQUEST FOR ISSUANCE OF SEARCH WARRANT for Farm, Farm Buildings and Home, Held on September 13, 1967.

[1]
STATE OF WISCONSIN FOND DU LAC COUNTY
COUNTY COURT BRANCH II

In the matter of the Request
for Issuance of a Search Warrant.

The following procedure was had before the Hon. H. W. McEssy, Judge of Fond du Lac County Court Branch II, in County Court II, in the city and county of Fond du Lac, Wisconsin, on the 13th day of September, 1967, at 9:35 o'clock A.M.

Mr. Alex Semenas, District Attorney, is personally present in Court.

COURT: This is a request for a search warrant by Dan Sondergard, Deputy Sheriff in and for Fond du Lac County.

Alex Semenas, District Attorney, is personally present in Court.

DANIEL SONDERGARD, being first duly sworn, on oath, by the Court, testified as follows:

EXAMINATION:

BY THE COURT:

Q. What is your name? A. Daniel R. Sondergard.

Q. What is your address? A. 46 Olcott Street, Fond du Lac, Wisconsin.

Q. Where are you employed? A. Fond du Lac County Traffic Police.

Q. Are you also a deputy sheriff for Fond du Lac County? A. Yes, sir.

Q. Now, on or about the 12th of September, 1967, were you on certain properties located in the town of Auburn, owned by a C. Dombrowski and a B. Dombrowski? A. Yes, sir, I was.

Q. Did you see any evidence of any crime that might have been committed on or about those premises? [2] A. A body had been found in the dump area on land either owned by or adjacent to them, and a vehicle owned by C. Dombrowski was found on the Dombrowski property. Also, in looking

through the window of the room maintained by the Dombrowskis, in the house, there appears some stained dark brown or reddish stain on the mattress on the bed; also, there are some rocks or stone sitting on a little table which could have possibly been the weapon that was used to inflict the damage to the forehead of the deceased party that was found in the field.

Q. Did you see the body of this deceased man? A. Yes, sir, I found him.

Q. You found the man? A. Yes.

Q. And was it in close proximity, or how far away was it from the farm buildings which you desire to search? A. It was — oh, I would say roughly fifteen hundred to two thousand feet.

Q. And you say you saw in these buildings what appeared to you to be blood stains, is that correct? A. Yes.

Q. You have reason to believe there might be any other weapons in there? A. Through the window I could see some boxes of shells on a piece of the furniture — I don't know the name of it — it is an old-fashioned piece of furniture, — there is a box of shells.

Q. Has this deceased man been identified yet as far as you know? A. No.

Q. In your opinion was he murdered? A. He was shot through the head, and beaten at least three times with a very sharp instrument of some unknown type, which possibly could have been one of these rocks or stones which are in the room with the blood stained mattress.

[3] Q. Just where is this property located that you want to search? A. It is located in the town of Auburn, Fond du Lac County, on the southeast corner of County Trunk G and County Trunk Highway S.

Q. The Southeast corner, you say? A. Yes.

Q. You want to examine the buildings and their environs? A. Yes.

Q. For the purpose of ascertaining whether or not there were any weapons that might have been used in the murder of this unidentified deceased man? A. Yes, the man was beaten before he was shot.

Q. And you found the body, yourself? A. Yes.

Q. This Court is of the opinion that Dan Sondergard, Deputy Sheriff of Fond du Lac County, is entitled to have a Search Warrant issued to the Sheriff's Department of Fond du Lac County to search the premises and report his findings to this Court within 48 hours.

Search Warrant is hereby issued.

That's all, Dan.

[4]

STATE OF WISCONSIN)
FOND DU LAC COUNTY) ss.

I hereby certify that I have carefully compared the above and foregoing with my original notes taken at the hearing in the above entitled action, and I find the same to be a full, true, and correct transcript therefrom, containing all the testimony and proceedings had on said hearing.

Dated this *13th* day of *September*, A.D., 19*67*

/s/Elaine Retzleff
Elaine Retzleff, Official Reporter
for County Court, Branch No. II
Fond du Lac County, Wisconsin

TRANSCRIPT OF HEARING ON RETURNS ON SEARCH WARRANTS, HELD ON SEPTEMBER 14, 1967.

[1]

STATE OF WISCONSIN FOND DU LAC COUNTY
COUNTY COURT BRANCH II

In the matter of a Return on
a Search Warrant issued to
Raymond J. Howard or Sheriff.

The following procedure was had before the Hon. H. W. McEssy, Judge of Fond du Lac County Court Branch II, in County Court II, in the city and county of Fond du Lac, Wisconsin, on the 14th day of September, 1967, at 10:25 o'clock A.M.

Mr. Alex Semenas, District Attorney, was personally present.

Mr. Raymond J. Howard, Under-Sheriff of Fond du Lac County, was personally present.

COURT: The matter before the Court at this time is a Return on a Search Warrant issued to Raymond Howard, Under-Sheriff of Fond du Lac County. Said Search Warrant having been issued at about 8:15 P.M. on September 12, 1967.

RAYMOND J. HOWARD, being first duly sworn, on oath, by the Court, testified as follows:

EXAMINATION:

BY THE COURT:

Q. What is your name? A. Raymond J. Howard.

Q. And your address? A. 1410 East Pioneer Road, Fond du Lac, Wisconsin.

Q. On the evening of September 12, 1967, you appeared before this Court and requested to search a 1960 Dodge automobile, License Number LB 428, which you believe might have been used in the commission of a crime. Did you search that vehicle? A. Yes, we did.

Q. And where is the vehicle now? A. The vehicle is impounded in the Safety Building garage in Fond du Lac.

[2] Q. Now, as a result of your search of the 1960 Dodge, License Number LB428, what did you find? A. We found on the right rear seat — back seat of the 1960 Dodge a large area of blood covering over twelve inches in diameter; the blood on the briefcase, which was on the left floor of the rear seat of the 1960 Dodge, and blood splattered on the back of the front seat on the 1960 Dodge.

Q. Did you examine the briefcase? A. We examined the briefcase and the articles in it were just some old papers.

Q. Were there any names or identification on the papers in the briefcase? A. Yes, there was the name of C. Dombrowski on some of the papers.

Q. No first names, just the first initial? A. Just the first initial.

Q. And you have this briefcase and papers located therein at this time? A. I believe the Sheriff has turned the briefcase and so forth over to the Wisconsin State Crime Laboratory for further investigation.

Q. Did you take any photographs of the 1960 Dodge? A. Yes, I took a photograph at 8:30 A.M. on September 13th of the back — a colored photograph of the back seat on the right side of the 1960 Dodge, showing the blood stains on that seat.

Q. Would you have that marked, Mr. District Attorney?

(Reporter marked colored photograph of car seat and back — Exhibit Returned on Search Warrant by Raymond Howard.)

Q. In what mechanical condition was this 1960 Dodge in your opinion? A. This car was not in running condition as it had a large hole pierced in the radiator.

Q. Where did you find the automobile? A. This automobile was found on the Chester Dombrowski and Bernard Dombrowski farm in the town of Auburn in Fond du Lac County.

Q. How did you remove the car from the Dombrowski farm to the [3] Q. (Ctd.) Sheriff's Garage in Fond du Lac? A. We had the Olson Wrecker Service from Fond du Lac.

Q. Did you find anything else in or about the 1960 Dodge which came to your attention as a result of the Search Warrant being issued? A. Right underneath the Dodge after we moved it, we found three books of matches with blood on; two of them partially burned and one not, in a pile of fresh straw that was laid there off of a farm wagon that was parked next to it.

Q. You say you found partially burned matches and straw under the automobile? A. Underneath the left front door of the automobile.

Q. Did you bring those matches in to the Sheriff's office? A. Them matches have been turned over to the State Crime Laboratory.

Q. Was there any inscription or writing on them advising where they might have been used or came from? A. I at this time can't say where they came from.

Q. Was there a writing or inscription on them? A. Yes, there was.

Q. And what did you do with them? A. I turned them over to the State Crime Lab to have them examined for the blood to see if it matched the blood inside the 1960 Dodge.

Q. Have you learned yet whether or not the blood does match? A. We have no report from the State Crime Lab at the present time. There was also a necktie found about four feet on the left hand side of the car; a dark blue or black necktie that was also blood-soaked, and that also was turned over to the State Crime Laboratory.

Q. Now, at or about the same time, namely: about 8:15 P.M. on September 12th, you requested a Search Warrant to search a 1967 Ford Thunderbird that had Illinois license Number HC8318. Did you search that vehicle? [4] A. Yes, we did search that vehicle.

Q. And what did your search reveal to you at that time? What did you find? A. There was an application or contract showing that the same party, Chester Dombrowski, who owned the 1960 Dodge, had rented this 1967 Thunderbird from Hertz Rent-a-Car at O'Hare Field in Chicago, Illinois.

Q. What was the name on the slip? Was it C. Dombrowski or Chester? A. I believe it was Chester Dombrowski.

Q. And that is the same name that the 1960 Dodge was licensed to? A. Yes.

Q. Is there anything else about that automobile that you saw when you examined it that you feel might be evidence of the commission of a crime, other than the fact this slip in the car bore the same name on the rental slip that is connected with the 1960 Dodge? A. No.

Q. And you have this 1967 Ford Thunderbird in the possession of the Sheriff? A. Yes, we do. It is also impounded at the Safety Building in Fond du Lac.

Q. All right, upon your return, you are hereby directed to execute the Return and turn the properties that you have that came into your possession as a result of issuance of these Search Warrants to the Sheriff of Fond du Lac County; they will be dealt with according to law after the Sheriff receipts for them.

[5]
STATE OF WISCONSIN)
FOND DU LAC COUNTY) ss

I hereby certify that I have carefully compared the above and foregoing with my original notes taken at the hearing in the above entitled action, and I find the same to be a full, true, and correct transcript therefrom, containing all the testimony and proceedings had on said hearing.

Dated this *15th* day of *September*, A.D., 1967

/s/ Elaine Retzleff
Elaine Retzleff, Official Reporter
for County Court, Branch No. II
Fond du Lac County, Wisconsin

DECISION AND ORDER ON DEFENDANT'S MOTIONS. Filed in Fond du Lac County Court on June 18, 1968.

STATE OF WISCONSIN FOND DU LAC COUNTY
BRANCH II
COUNTY COURT

STATE OF WISCONSIN,)
Plaintiff,)
)
-vs-) Case No. 77626
)
CHESTER J. DOMBROWSKI,)
Defendant.)

The defendant, through his attorneys, David E. Leichtfuss and Robert N. Gordon, moves the Court as follows:

1. Suppressing all physical evidence taken from this defendant, his automobile, any other automobile is his care, custody and control, a farm owned by Bernard Dombrowski located partially in Fond du Lac County, or elsewhere, on September 11, 1967, or any time thereafter.

2. To be furnished a copy of the Fond du Lac County Coroner's findings, conclusions and reports, including without limitation, all notes and memoranda prepared by said Coroner or any physician assisting in the autopsy which pertain and relate to the allegations contained in the indictment against this defendant.

The District Attorney for Fond du Lac County, Alexander P. Semenas, appeared in opposition to Paragraph 1 of the defendant's motion; and, as to Paragraph 2, it was stipulated on the record that the defendant's counsel would be permitted any and all information that may be in the hands of the Fond du Lac County Coroner or any physician assisting in the autopsy pertaining and related to the allegations contained in the indictment against the defendant, Chester J. Dombrowski. This Court has been advised that Paragraph 2 of the defendant's motion has been complied with pursuant to the stipulation referred to.

The District Attorney opposed Paragraph 1 of the defendant's motion, and testimony was taken in open court in the presence of all above counsel referred to and the defendant, Chester J. Dombrowski.

Though Paragraph 1 of the defendant's motion to suppress certain physical evidence taken from the defendant is vague and in general terms, the Court will endeavor to recapitulate the record made during the course of this proceeding and determine the motion on that basis.

I

There has been reference made to a search of a Thunderbird automobile owned by Hertz, but on lease to the defendant, and allegedly searched by the Washington County authorities without a warrant.

The Thunderbird vehicle was taken into custody by the Washington County authorities after an accident and while the defendant was in the West Bend Hospital. It is not indicated anywhere in the record what evidence, if any, produced as a result of this search is requested to be suppressed. At the time of the search by the Washington County authorities, however, the Washington County authorities were apprised of the fact that the defendant, Chester J. Dombrowski, was identified as a Chicago policeman and was at that time under arrest in Washington County for operating an automobile while intoxicated.

It has been held on numerous occasions in Wisconsin that on a motion to suppress evidence because of an unlawful seizure, the burden of establishing that the defendant's rights have been transgressed is upon the party asserting such transgression. The defendant has failed to meet this burden of proof in regard to the alleged search by the Washington County authorities; he called no witness in regard thereto nor any of the Washington County authorities that may have participated in the alleged original search of the Thunderbird, which facts and circumstances, so far as the record now stands, indicates that the original search of the Thunderbird was a routine police procedure, when they were charged with the responsibility of safekeeping of the defendant's property pending his release and return of his property to him.

There is nothing in the record to indicate that the Washington County authorities knew anything of any alleged murder at the time they went to search the Thunderbird and the defendant's personal articles, if any, at which time the defendant was under arrest and charged with operating an automobile while intoxicated and was in a West Bend hospital.

It would appear to the Court that the record so far as any articles taken from the Thunderbird by the Washington County authorities as a result of a custody search of the same after it was towed off the highway in a damaged condition, pursuant to police order, was nothing more than good routine police work to protect the personal property of Chester J. Dombrowski.

It is accordingly the order of this Court that the defendant's motion to supress any evidence taken from the in-custody search of the Thunderbird by the Washington County authorities is denied.

State vs. Stevens, 26 Wis. 2d 459. Lanza vs. State of New York, 370 U.S. 139. Abel vs. U.S., 362 U.S. 217. State vs. Drew, 217 Wis. 216. Gray vs. State, 243 Wis. 57.

II

Defendant further moved to suppress any evidence obtained as a result of a search of the dumping area on the farm owned by Bernard J. Dombrowski without a warrant.

The record discloses that a search was made by Washington County and Fond du Lac County authorities and other lay persons of the dumping area on the Bernard J. Dombrowski farm, which search produced the body of Herbert L. McKinney, found in the dumping area. This search was

made without a warrant, but the area searched was beyond the curtilage of the farm buildings, to-wit: 1,500 to 2,000 feet from the buildings.

The search was a routine police investigation of a report to the Washington County authorities, and passed on to the Fond du Lac County authorities, that a body could or might be found on this farm. This search in no way violated any of the defendant's constitutional rights, and it might be added that the defendant had no proprietary interest in this farm, so far as this record is concerned, other than a permissive visitor on a farm located in Fond du Lac County owned by his brother, Bernard J. Dombrowski (now deceased).

Defendant's motion to suppress any evidence gained by the authorities as a result of the search of the dumping area on the Bernard J. Dombrowski farm without a warrant falls under the "Open Fields Doctrine," the dumping area involved being well beyond the curtilage of the farm operation or any other use to which this 140 acres was being put.

It is accordingly the order of this Court that the defendant's motion to supress evidence obtained by authorities from a search of the dumping area on the Bernard J. Dombrowski farm is denied.

Weeks vs. U.S. 232 U.S. 383. Hester vs. U.S., 265 U.S. 57. Katz vs. U.S., 12/18/67, Supreme Court Reporter, Vol. 88 - No. 6, Jan. 15, 1967, Page 507.

III

Defendant further moves to suppress any evidence obtained as a result of a search of a 1960 Dodge automobile owned by the defendant, Chester J. Dombrowski, and located on the Bernard J. Dombrowski farm in Fond du Lac County, which search was made pursuant to a search warrant.

The 1960 Dodge was owned by the defendant, Chester J. Dombrowski, and, at the time application for a search warrant was made it was located on the Bernard J. Dombrowski farm off the northwest corner of the barn about 75 feet and about half a block from the farmhouse, apparently outside the curtilage of the farm buildings.

At the time of the application to the County Judge of Branch II of the Fond du Lac County Court for a search warrant for the 1960 Dodge, it was established that a body had been found in Fond du Lac County on the Bernard J. Dombrowski farm; that the Dodge was owned by Chester J. Dombrowski, who, at the time, was under arrest in Washington County for operating an automobile while intoxicated. Undersheriff Raymond J. Howard also testified before Judge McEssy in Branch II of the County Court as follows, Page 2 of the transcript of the record made before the Honorable Hazen W. McEssy, County Judge, Branch II, Fond du Lac County Court:

QUESTION: Why do you want to examine this automobile or search it?

ANSWER: Because a man by the name of Chester Dombrowski had an accident just south of the Fond du Lac County line last night in which Washington County arrested him for drunken driving; and in so arresting him, they searched the car, and they found the floormat from the back of a Dodge car filled with blood and a raincoat, and a combination penknife and letter-opener, and while questioning the subject in Washington County, he demanded an attorney and said he would then give a statement.

Afterwards, he would not give a statement, but the attorneys made remarks that there would be a body found on the brother's farm, which is located in Fond du Lac County.

QUESTION: Brother of who?

ANSWER: Brother of Chester Dombrowski.

It appears to this Court that the evidence presented to County Judge Hazen W. McEssy at the time of seeking a search warrant for the 1960 Dodge was within the personal knowledge of Undersheriff Raymond J. Howard or based upon reliable information obtained by him from the Washington County authorities. The facts and circumstances related to Judge McEssy certainly were sufficient to convince him that there may be instruments or other articles which may have been used in the commission of a crime or may constitute evidence of a crime contained in this 1960 Dodge that may reasonably reveal some association with the dead body of Herbert L. McKinney. Judge McEssy, in granting this search warrant, was relying upon more than mere conclusions, suspicions or beliefs on the part of Mr. Howard. All of the facts and circumstances established probable cause for the issuance of the search warrant for the 1960 Dodge.

The search warrant set the limits of the search and required the searching authority to make return to a judicial officer. This was not a search without a warrant but rather a situation where we have the deliberate impartial judgment of a judicial officer finding probable cause, and interposing between the citizen and the police in making the determination as to whether or nor the search should be made.

It is, therefore, ordered that the defendant's motion to suppress evidence obtained as a result of the search of the 1960 Dodge owned by Chester J. Dombrowski, pursuant to a search warrant legally issued and complied with, be denied.

State vs. Baltes, 183 Wis. 545. State vs. Brockman, 231 Wis. 634. Krause vs. State, 226 Wis. 383. Aguilar vs. Texas, 378 U.S. 108. Biondo vs. U.S. 348 Fed. 2d, 272.

I V

The defendant further moves to suppress any evidence as a result of a search of the Thunderbird automobile located in Washington County at the time of the issuance of the search warrant to search said vehicle.

It is undisputed that the search warrant was issued by Judge McEssy in Branch II of the County Court of Fond du Lac County, and that the Thunderbird automobile at the time was located at a garage parking lot in the City of Kewaskum, Washington County. The defendant contends that the search warrant for the Thunderbird was illegal for the reason that it went beyond the Fond du Lac County boundary and that the search actually took place outside of Fond du Lac County. Chapter 963 of the Wisconsin Statutes does not specifically spell out that the search warrant is restricted to the county in which the same may be issued; but, in Section 963.03 (2) said section specifically authorizes the issuance of a search warrant in one county for search in another county for situations and circumstances therein set forth.

It is accordingly this Court's conclusion that the Legislature fully intended, in the absence of spelling out exceptions thereto, that the search warrant be used within the county where the premises or property is located and where the search warrant is obtained. This question was raised in *Ashley vs. Peterson, 25 Wis. 621,* but was not resolved, and this Court has found no authority to the contrary authorizing the issuance of a search warrant in one county for search in another county.

It is accordingly the order of this Court that the defendant's motion to suppress evidence obtained as a result of the search of the Thunderbird located in Washington County, pursuant to a search warrant illegally issued, be, and the same is hereby, granted.

V

The defendant further moves to suppress any evidence as a result of a search of the farm residence, owned by Bernard J. Dombrowski and located in Fond du Lac County, pursuant to a search warrant. The record herein discloses that the farm residence and farm property was owned by Bernard J. Dombrowski and that he had tenants in the farm residence but reversed unto himself a separate room. It is indicated by the record that Chester J. Dombrowski had no proprietary rights in this farm residence but apparently was a permissive visitor of his brother in using the room reserved for Bernard J. Dombrowski.

At the time of application for the search warrant, Officer Daniel R. Sondergard gave testimony before the Honorable Hazen W. McEssy in Branch II of the County Court,

and at that time the Court was apprised of the fact that a dead body had been found on the farm; and, in conducting a reasonable search and inquiry after finding said body in the area of the dump, application was made for the search of a 1960 Dodge located on the farm and also application for a search of the premises. Officer Sondergard testified that he looked through the window of the room reserved for the Dombrowskis and saw what would appear to him to be blood stains and some rocks or stones sitting on a table and a box of shells.

It is related in the record in the application for the search warrant that at the time and from the cursory observation of the McKinney body that these items might very well have been used in the commission of a crime in causing the death of McKinney.

There is little doubt but what the information related in the application for the search warrant was gained by peering through the window. This matter, however, was discussed extensively in *Edwards vs. State, 38 Wis. 2d 332,* wherein arrest was made without a warrant. In the case at hand, Sondergard returned to the Court and sought a search warrant before entering the premises of Bernard J. Dombrowski. It may very well be argued that these observations made by Sondergard constituted a search. It is true that a search can be conducted by one's eyes alone. However, as stated in the Edwards case, supra:

> "A search implies a prying into hidden places for that which is concealed. It is not a search to observe what is in plain view. Even though visual surveillance of things within plain view may be regarded as a search the real issue to be settled is whether or not such

activities are regarded as an unreasonable search as circumscribed by either the Fourth Amendment of the United States Constitution or Art. I, Sec. 11 of the Wisconsin Constitution."

It is further stated in the Edwards case that:

". . . whether or not a search or investigation is reasonable is not a matter for the application of the comparatively rigid rules of tort and property law, but is rather a matter of an inquiry as to whether the search or investigation is constitutionally reasonable under the circumstances. If police conduct is not considered unreasonable in the circumstances, it is not made unreasonable if it is deemed to have involved a civil trespass."

Considering what this Court has heretofore stated in determining other issues involved in the defendant's motions, and all of the facts and circumstances here involved, this Court concludes, as did Judge McEssy, that the police conduct in peering into this particular room on the Dombrowski property was not an unreasonable invasion of the defendant's, Chester J. Dombrowski's, rights.

It is, therefore, ordered that the defendant's motion to suppress evidence obtained as a result of the search warrant for the premises of Bernard J. Dombrowski be denied.

This case is scheduled for jury trial before this Court on July 8th, 1968, commencing at 9:30 a.m. In view of the fact that a jury is to be selected, this Court is taking the precaution of causing this order to be stamped filed by the Clerk of this Court and impounded by said Clerk so that the same is not released to the public or news media prior to the completion of the selection of the trial jury in this proceeding. Copies of this determination and order, however,

are being sent to counsel, and it is expected that they will treat the information contained herein in accordance with the Court's foregoing expressed intention.

Dated: June 18, 1968.

BY THE COURT:

/s/ Jerold E. Murphy
JEROLD E. MURPHY,
Acting County Judge

MEMORANDUM DECISION ON MOTIONS AFTER VERDICT. Filed in Fond du Lac County Court on August 1, 1968.

COUNTY COURT
BRANCH No. II

STATE OF WISCONSIN FOND DU LAC COUNTY

STATE OF WISCONSIN,)
Plaintiff,)
)
-vs-)
CHESTER J. DOMBROWSKI,)
Defendant.)

The jury duly impaneled in the above-entitled action returned a verdict on July 18th, 1968, wherein they found the defendant, Chester J. Dombrowski, guilty of murder in the first degree as charged in the indictment returned by the Grand Jury of Fond du Lac County. Thereafter, the Court scheduled motions after verdict to be held on July 25th, 1968.

The State, through the District Attorney of Fond du Lac County, Alexander P. Semenas, in its motion after verdict, moved the Court for entry of judgment upon the jury verdict finding the defendant guilty of first degree murder.

The defendant, through his attorneys, David E. Leichtfuss and Robert N. Gordon, moved the Court for entry of an order dismissing the above-entitled action and for a judgment of acquittal notwithstanding the jury verdict, or in the event the aforesaid motion is denied, for the entry of an order setting aside said verdict and granting to the defendant a new trial, and as grounds therefor asserts the following:

1. The Court erred in denying the defendant's motion for a dismissal of the action at the close of the State's case.

2. The Court erred in denying the defendant's motion for a dismissal of the action at the close of all testimony.

3. The Court erred in admitting into evidence physical evidence obtained as the result of official illegality and in violation of defendant's constitutional rights.

4. The Court erred in permitting Attorney Clyde Schloemer to testify as to the content of a conversation he had with the defendant.

5. The Court erred in denying defendant's motion for a mistrial immediately following highly inflammatory and grossly prejudicial remarks made by the District Attorney in his closing argument.

6. There was not sufficient credible evidence adduced upon the trial to support the finding by the jury that the defendant was guilty beyond a reasonable doubt.

7. In the interests of justice.

As to defendant's alleged error in items 1 and 2 listed above, suffice it to say that during the course of these proceedings and at the conclusion of the State's presentation, defendant moved for dismissal of the action which the Court denied at that time without comment. At the conclusion of all of the testimony, the defendant moved for dismissal of the action which the Court again denied without supplemental comment. This Court having heard all of the evidence in this proceeding, and reviewing the multitude of exhibits received, came to the conclusion at the time of the conclusion of the State's case and at the conclusion of all of the evidence that regardless of the fact that considerable amount of the evidence, facts and circumstances surrounding the material aspects of this case were circumstantial in nature, that the cumulative effect of the circumstantial evidence led this Court to conclude beyond a reasonable doubt that the defendant committed the crime with which he was charged. A more serious aspect, however, arose as to whether or not the venue of the offense with which the defendant was charged properly occurred in Fond du Lac County. Here the Court considered Section 956.01 of the Wisconsin Statutes, and was convinced, from the testimony presented, beyond a reasonable doubt, though phases of that testimony were also circumstantial, that either the defendant shot the decedent, Herbert L. McKinney, in Fond du Lac County or that he inflicted a wound which caused the death of Herbert L. McKinney in Fond du Lac County.

In its instructions to the jury, the Court submitted Section 956.01, Sub. 1, Sub. 3, and Sub. 4, and instructed said jury that venue, which is the legal term for the place of trial, must be proved beyond a reasonable doubt. This instruction was given in the exact form requested by the defendant.

It is significant that Doctor Robert E. Carlovsky, the doctor who performed the autopsy on the decedent's body, in addition to much other cumulative evidence, testified that a body does not bleed after it is dead. Once the heart action stops, the blood does not pump out. He stated that from the nature of the wound here inflicted upon McKinney that he did not think that McKinney lived more than one hour. He testified to a reasonable degree of medical certainty that when there is an injury to a body, such as the case at hand, the body will try to preserve its functions — especially in the heart and the brain; and, therefore, it will pump blood, if there is bleeding, from any site to the brain and to the heart to keep these vital organs going. So long as there is blood enough to do this, the patient will stay alive. When you have pumped out or lost all of the blood, the heart will stop functioning, and the patient is dead.

In the case at hand, the 1960 Dodge found on the Dombrowski farm disclosed extensive blood on the back seat, back rest, back of the front seat, on the floor mat, drippings down to the framework of the automobile and that this blood was Type "O" which matched the decedent, Herbert L. McKinney's blood typing, and as testimony subsequently revealed, was different than the defendant's blood type, which was Type A Positive.

The doctor was further asked as follows:

Q Based upon your observations of the autopsy that you performed in the evening of September 12th, 1967, do you have an opinion as to the time of death of this individual?

A Yes, I do.

Q What is that opinion?

A My estimation was the person had been dead 40 hours prior to the time I started — 11:00 p.m. on the 12th, plus or minus 6 hours.

Q How did you reach such a conclusion, doctor?

A This was based on the external examination of the body and microscopic findings on the tissues and the gross impressions of the internal tissues, also.

According to the doctor's testimony, this would place the time of death at approximately 7:00 a.m. on September 11th, 1967, plus or minus 6 hours.

This Court was convinced beyond a reasonable doubt, and apparently the jury came to the same conclusion, that the decedent was not only shot in the 1960 Dodge located in Fond du Lac County but also died in the 1960 Dodge located in Fond du Lac County, thus establishing venue beyond a reasonable doubt, though based upon circumstantial evidence, and also establishing from the cumulative circumstantial evidence received that the defendant committed the offense with which he was charged, and that the proofs establish such fact beyond a reasonable doubt.

The defendant's third allegation of error is relative to admitting into evidence physical evidence obtained as a result of an official illegality and in violation of the defendant's constitutional rights. From a review of the exhibits, this is primarily directed at the search of the 1960 Dodge pursuant to a search warrant and the search of the Thunderbird automobile. Here the Court refers the present reader to its decision of June 18th, 1968. There appears to be no useful purpose in repeating the Court's decision of June 18th, but that certain evidentiary facts presented to the Court during the course of this trial, particularly the testimony of Officer Weiss of the Washington County Police Department, supplements the testimony taken at the time of the motion to quash evidence brought by the defendant. The testimony here in summary form was to the effect that the Washington County Police were advised that there had been an accident in the vicinity of Kewaskum involving a 1967 Ford Thunderbird. The police proceeded to Kewaskum and found the defendant in a tavern at Kewaskum, and then proceeded with the defendant to the scene of the accident. The police called a wrecker which arrived at the scene of the accident while the officers were still there in the presence of the defendant, and the Thunderbird was subsequently towed to Honeck's Garage where it was placed on a lot outside of said garage. The Washington County Police then took the defendant to the Washington County Jail where he was placed under arrest for operating an automobile while under the influence of intoxicating liquor at or about 11:58 p.m., September 11th. After the exchange of some information during the course of which the defendant, Dombrowski, identified himself as a Chicago policeman, the defendant was hospitalized; and

then, at or about 2:23 a.m., Officer Weiss returned to Kewaskum to, as he stated, "look for the defendant's service revolver."

There appears to be no question but that the arrest of Dombrowski by the Washington County Police for operating an automobile while under the influence of intoxicating liquor was a bona fide arrest; that the defendant, Dombrowski, at that time was under police custody and in no position to look after the welfare of his property that had been involved in the accident, namely the Thunderbird and other personal items that he may or may not have had in said vehicle. The Washington County Police believed that a metropolitan policeman off duty carries a revolver, and they did look in the Thunderbird for the revolver. However, there was no evidence of this being an exploratory search by the officer for any reason other than to secure items of a personal nature that may have been in the wrecked automobile, and parked outside at this time, for the general benefit of the defendant, Dombrowski. It is significant at this point that when Officer Weiss made the search of the Thunderbird that he had no information whatsoever that the defendant, Dombrowski, was involved in any violation of the law other than the operating an automobile while under the influence referred to above, and that the only motivation of Officer Weiss in searching the Thunderbird was to safeguard the defendant's property during the period of time that he may be hospitalized or in official custody and unable to look after the same himself.

It appears to this Court that the conduct of Officer Weiss was exactly what good police procedures require for the protection of the great mass of citizenry, and, in this particular case, the defendant himself, at the time that Weiss

made the search. The fact that other evidence during the course of this search was found that subsequently involved the defendant in a more serious offense does not in and of itself violate the defendant's constitutional rights. In this Court's opinion, the conduct of the officer seems to be one of reasonableness, for he was not at the time of searching the automobile looking for any incriminating evidence, but was following what he termed to be a standard operating procedure in police work relative to safeguarding the property of Dombrowski.

It appears to this Court that if the search of the automobile by Weiss when he was not looking for any incriminating evidence whatsoever, but apparently only securing the property of a person lawfully under arrest is to be held illegal, then the rights of the great mass of citizens that may be involved in accidents or stalled vehicles, etc. will probably be jeopardized. To say that police can legally take custody of an automobile and tow it off the highway when it is involved in an accident and assume no responsibility for the automobile or its contents would appear to be contrary to the great public interests of the citizens of this state, and to say that if they do take custody of such a vehicle and then, during the course of a routine inventory or inspection of said vehicle, when they are looking for no criminal evidence whatsoever, discover criminal evidence or contraband, and because the evidence is criminal or contraband, then taint said search of the vehicle with illegality, would be illogical and arrive at a ridiculous legal conclusion. The fact is that under these circumstances the search of vehicles in the same or similar circumstance is not in an of itself unreasonable, but rather protective. When an article lawfully comes into the officer's

possession in the course of such a lawful search, without a warrant, it would be entirely without reason to say that it would be illegal to use the same at a subsequent prosecution because it was not one of the things it was his business to look for or he didn't have a search warrant at the time that he made the search. As a matter of fact, this Court determines that despite the time lapse involved that the search here was incidental to the arrest for operating an automobile while under the influence of intoxicating liquor, and was the same procedure as inventorying personal property the defendant may have upon his person at the time he may be taken into custody. It is accordingly the Court's determination that the search of the Thunderbird by Officer Weiss was a legal search and that the evidence produced as a result therefrom was properly admitted and considered in the course of these proceedings.

It is further argued in the fourth item set forth above that the Court erred in permitting Attorney Schloemer to testify as to the content of a conversation he had with the defendant on the ground of attorney-client relationship, the same being a privileged communication pursuant to Wisconsin Statutes. Here the Court guided itself by a Court order in State ex rel. Clyde J. Schloemer, Petitioner, v. The County Court, Branch II of Fond du Lac County, the Honorable Hazen W. McEssy Presiding, Respondent, wherein the Wisconsin Supreme Court on March 8th, 1968, in response to Attorney Clyde J. Schloemer's petition for a writ of prohibition, directed that three questions could be asked, and they were asked in the form that the Supreme Court order had directed: 1. "Did Mr. Dombrowski indicate to you that he wanted a communication made to a third party?" In response to the foregoing question, Attorney Schloemer answered in

the affirmative; then, in accordance with the Supreme Court directive of March 8th, the following questions were asked of Attorney Schloemer: 1. "What was the content of the message that Mr. Dombrowski wished to have communicated to a third party?" 2. "To whom was the message to be communicated?"

This Court considers that to the extent indicated above that Attorney-client relationship had been waived by the defendant, Dombrowski, and that the foregoing questions were properly asked during the course of this proceeding, and the same did not constitute error.

The defendant's fifth ground for error alleged above refers to highly inflammatory and grossly prejudicial remarks made by the District Attorney in his closing argument.

During the course of the rebuttal argument, the District Attorney in referring to Mr. Schloemer's testimony, stated as follows: "I've got something to tell you," he infers it. What happens after that? What do they find as a result of that? They go out and they find this body. Who knows where it is at? One person . . . at that time . . . one person . . . and that person is seated at that table there. (Pointing). No one else. Mr. Leichtfuss inferred about the .38 caliber. Why, yes, there are different manufacturers. Simple way to answer this — Mr. Mauer gave it to us — All the defendant had to do was produce the gun."

Immediately after the foregoing, objection was made as unfair argument. At that point the Court instructed the jury that they were admonished to disregard that phase of the argument on behalf of counsel and that counsel was not to repeat any phase of that argument as to what the defendant may have been called upon to produce.

The District Attorney then continued his rebuttal argument, and at one phase near the close of the argument, referring to the defendant, stated: "He is vicious and violent, and ought to be exterminated. It is up to you to do your job. We have done ours. We have done that. This person has to be taken care of, and I believe it is your duty to do so." As to this last phase of the argument, counsel for the defendant did not make any objection, though he has at a later point on the motions after verdict referred to the same. Nevertheless, the Court at the conclusion of the District Attorney's rebuttal argument stated as follows: "We will take a recess at this time. The Court wants to again admonish the jurors that the statement of the District Attorney relative to the defendant producing anything whatsoever in this proceeding is improper, and the Court at that time instructed the District Attorney it was improper. I admonish you to disregard it, and you are to draw no inferences whatsoever. You are to completely disregard that, and I want to impress upon you that the defendant is under no obligation in any criminal proceeding to produce anything. We will take a recess now after which the Court will instruct the jurors."

Then, during the course of instructions at the phase in which the court was instructing the jury relative to considering closing argument of counsel, the Court again repeated: "It is your duty to draw your own conclusions and your own inferences from the evidence, and to decide upon your verdict according to the evidence, under the instructions given you by the Court. In that respect, I admonish you that during the rebuttal argument of the State that certain improper statements were made by the District Attorney — and you were asked at the outset of this trial whether you subscribed to

the theory that it was the responsibility of the State to prove a defendant guilty; and, then, under no circumstances, does it ever shift to where the defendant has to prove his innocence in any way whatsoever. I admonish you to completely disregard the statement that was objectionable." The form instruction was given relative to argument of counsel and the jury was also advised "that closing arguments of counsel and their conclusions and opinions are not to be considered by you as evidence in this case."

This Court is of the opinion that though the argument of the District Attorney may have been improper that the error, if any, was immediately corrected by the Court, and that the jury responded on the voir dire, and in their attention to the Court's admonitions to disregard the improper argument they did so in their deliberations. This Court does not feel that the comment of the District Attorney, when properly corrected by the Court, prejudiced the defendant in this proceeding.

As to items 6 and 7 set forth in the defendant's motions above, this Court is of the opinion that sufficient credible evidence adduced upon the trial of this case was presented to support the jury's finding that the defendant was guilty of first degree murder beyond a reasonable doubt, and this Court is further convinced that justice has prevailed throughout this trial.

It is accordingly the determination of this Court that the defendant's motions after verdict be, and the same are, denied, and it is the judgment of this Court that the defendant be adjudged guilty of having on the 11th day of September, 1967, in the Town of Auburn, County of Fond du Lac, State of Wisconsin, feloniously and with intent to kill, cause the

death of another human being, to-wit: Herbert L. McKinney, contrary to Section 940.01 of the Wisconsin Statutes, and against the peace and dignity of the State of Wisconsin.

Dated: August 1, 1968.

BY THE COURT:

/s/ Jerold E. Murphy
JEROLD E. MURPHY,
Acting Judge,
County Court Br. II
Fond du Lac County, Wisconsin

TESTIMONY OF WILLIAM WEISS, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County Court.

[30] WILLIAM WEISS, called as a witness herein on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

Q. Please state your name? A. William Weiss.

Q. Where do you live? A. Allenton, Wisconsin.

Q. What is your occupation? A. Traffic officer with the Washington County Sheriff's Department.

Q. Were you a traffic officer for Washington County on Monday, September 11th, 1967? A. Yes, sir, I was.

[31] Q. Do you recall what hours you were on duty on Monday, September 11th, 1967? A. 7:00 p.m. until 4:00 a.m.

Q. While on duty on September 11th, 1967, did you have any occasion to go into the area near Kewaskum?

* * *

A. Yes, sir, I did.

* * *

[32] Q. When you went into the area of Kewaskum, what did you see, or what did you do? A. My partner and I went to the Village of Kewaskum; I was driving the police car, and I parked it on Main Street facing north on the right-hand side of the road, which should be the east side.

Q. And by your partner, who do you mean? A. Officer Bruce Boudry.

Q. What did you do after you parked the vehicle? A. I remained in the vehicle.

Q. And what else took place? What did you observe then? A. I observed Officer Boudry get out of the car and go to the opposite side of the road into a tavern.

Q. Did you make any other observations after you observed Officer Boudry go into the tavern? A. A few moments later he came out, and he went into another tavern on the same side of the street we were parked on.

Q. What other observations did you make after you observed him crossing the street again? [33] A. He went into the tavern on the same side of the street I was parked on.

Q. What is the name of that place? A. Glacier Inn.

Q. What observations did you make after he went into the Glacier Inn? A. Few moments later he came out with the subject and brought him to the police car.

Q. And the first person that was brought to the police car in the evening of September 11th, 1967, do you observe him in the courtroom at this time? A. Yes, sir, I do.

Q. Where is he seated? A. Seated over there at the defendant's table.

* * *

Q. What took place after Officer Boudry and the defendant, Mr. Dombrowski, came to the squad car? A. Mr. Dombrowski got into the right rear seat of the police car, [34] and Officer Boudry got into the right front seat, and we drove out to the scene of the accident.

Q. And where is the scene of this accident you drove to? A. North of Kewaskum right near the bridge at the Fond du Lac-Washington county line; just inside Washington County.

* * *

Q. Mr. Weiss, when was the defendant, Mr. Dombrowski, placed under arrest? A. At the Sheriff's Office in West Bend.

Q. What observations did you make after you arrived at the scene of the accident on September 11th, 1967? A. On the east side of the road, off of the road, there is a little driveway leading down to the embankment. There was a guardrail broken off; looked like it was in an L-shaped form, broken form, and there was a car down below.

Q. What type of vehicle was this that you observed on the evening of September 11th, 1967? A. A Thunderbird car with Illinois license plates on it.

[35] Q. What did you do after you made the observations at the scene of the accident? A. I remained in the police car with the defendant.

Q. What took place after that? A. I asked the defendant for his license and identification, and Officer Boudry went down and took the measurements of the scene of the accident.

Q. After your investigation of the accident scene was completed, what did you do? A. The three of us went back to the Sheriff's Office in West Bend.

Q. Did you observe the damage to the Thunderbird? A. No, sir, I didn't; I didn't get out of the car.

Q. You stated you returned where after your observations at the scene of the accident? A. We returned to the Sheriff's Office in West Bend.

Q. And what did you do after you arrived at the Sheriff's Office in West Bend? A. We talked to the Assistant District Attorney, Aldwin Seefeldt.

Q. Was the defendant, Mr. Dombrowski, present at this time? A. Yes, sir, he was.

Q. Who else was present? A. Myself, Officer Boudry, and the Assistant District Attorney, Aldwin Seefeldt.

Q. What took place at the Sheriff's Office in West Bend? A. Mr. Seefeldt asked Mr. Dombrowski —

* * *

[36] A. Mr. Seefeldt asked Mr. Dombrowski who he was —

* * *

A. Mr. Seefeldt asked Mr. Dombrowski who he was and if he was a member of the Chicago Police Department.

Q. What took place after that statement? A. I stayed in the line-up room with Mr. Dombrowski. Officer Boudry and Mr. Seefeldt stepped out of the room for a few moments.

Q. Continue, and relate what took place in the Sheriff's Department after that that you observed — your personal observations? [37] A. Mr. Dombrowski and myself were in the line-up room for a few seconds alone; Mr. Seefeldt came back in and advised us to treat Mr. Dombrowski as we would any other citizen and charge him with drunken driving.

* * *

Q. Was Mr. Dombrowski charged with any violation? A. Yes, sir, he was charged with drunken driving.

* * *

Q. Relate what happened after you charged Mr. Dombrowski with drunken driving? A. We took him to the West Bend Police Department for a breathalyzer test.

Q. By "We," who do you mean? A. Officer Boudry and myself.

Q. And what took place then after you took him to the West Bend Police Department? A. There an officer from the West Bend Police Department administered a "chem" test

[38] Q. Relate what took place after you arrived at the West Bend Police Department? A. The officer from the West Bend Police Department and myself and Officer Boudry took Mr. Dombrowski into the testing room to give him a "chem" test, which he refused to take.

Q. What else took place? A. Mr. Dombrowski continually told us he was a Chicago policeman —

* * *

Q. Continue with your observations that you made? A. Mr. Dombrowski was what I would call in a drunken state; his talking was slurred, and he continually begged if we couldn't forget about this matter, being he was a member of the Chicago Police Department, and any type of traffic violation would mean his automatic dismissal from the force in Chicago. He stated that if we would forget —

* * *

[41] Q. Did you make any other observations at the West Bend Police Station on the evening of September 11th, 1967, when the defendant, Mr. Dombrowski, was in your presence? A. I noted that he was, to the best of my knowledge, in a drunken condition; that he was incoherent at times, * * *.

* * *

Q. What took place after the tests were completed at the West Bend Police Station on the evening of September 11th, 1967, when the defendant, Mr. Dombrowski, was present? [42] A. Mr. Dombrowski, Officer Boudry, and myself went to St. Joseph's Hospital in West Bend.

Q. And what took place after Officer Boudry and yourself and the defendant, Mr. Dombrowski, went from the West Bend Police Station to the hospital at West Bend? A. Mr. Dombrowski was examined by a nurse as to his physical condition.

Q. Were you present at this time? A. Yes, sir.

Q. What did you observe in this examination that took place of the defendant, Mr. Dombrowski, on the evening of September 11, 1967? A. Mr. Dombrowski was laying on the examination table — I observed blood on the front of his shirt and a little blood around his nose, and the nurse examined him for any injuries.

Q. What did you do after you made these observations? A. We asked for — asked the nurse if she would call a doctor.

Q. Was a doctor called? A. Yes, sir, he was.

Q. What took place after this call was made to this doctor? A. Doctor Sorensen then came to the hospital at West Bend and examined Mr. Dombrowski.

Q. Were you present when Doctor Sorensen examined the defendant, Mr. Chester Dombrowski, on the evening of September 11th, 1967? A. Yes, sir, I was in the room.

[43] Q. What observations did you make when you observed the examination of the defendant, Mr. Dombrowski, by Doctor Sorensen on the evening of September 11th? A. When the doctor started to examine Mr. Dombrowski he was laying on the table on his back, and his left leg started to shake heavily; he tipped his head back, and when the doctor asked him a question, he pointed to his mouth with his right hand and made noises; he did not answer any questions, and he continued to shake and make noises out of his mouth.

Q. What took place after you made these observations when the doctor was examining the defendant, Mr. Chester Dombrowski, on the evening of September 11th, 1967? A. The doctor examined him as best as he could, and he said, to the best of my knowledge —

* * *

A. The doctor stated that to the best of his knowledge the defendant just suffered from a nosebleed — or a bump on his nose to cause the nosebleed, and that he was just good plain drunk.

[44] Q. And what took place after the doctor made this statement to you on the evening of September 11th, 1967? A. The doctor then took a sample of the defendant's urine.

Q. What room in the hospital was this examination made? A. In the Emergency Room on the third floor, St. Joseph's Hospital in West Bend.

Q. And after this urine sample by the doctor of the defendant was taken, what took place? A. The doctor stated that the defendant may be suffering from some type of disease that he wasn't aware of that was causing him to shake or not be able to speak, so he thought it would be best if he could call the defendant's wife and find out if he would be able to give further treatment to him.

Q. And what happened after this statement was made by the doctor? A. The doctor and myself went down into the office of the hospital, and we called the defendant's wife.

* * *

[45] Q. Did you have any conversation on the phone with anyone?

* * *

A. Yes, sir, I did.

* * *

Q. What took place, Officer Weiss, after this phone call was made to this party in Chicago? A. The doctor and myself went upstairs again, and I received a telephone call from the Assistant District Attorney, Aldwin Seefeldt, * * *

* * *

Q. What took place after you received the phone call from the Assistant District Attorney, Mr. Seefeldt? A. Mr. Dombrowski was moved to a room in the hospital. Officer Boudry was assigned to guard Mr. Dombrowski while he was staying in the hospital.

Q. What did you do after this took place? [46] A. I left the hospital, and I drove up to Honeck's Garage in Kewaskum.

Q. Why did you drive up there?

* * *

A. I drove up to Honeck's Garage because the fact had been established that Mr. Dombrowski was indeed a member of the Chicago Police Department; and, in our search of the subject, of the defendant, we did not find his revolver on him, and we are under the assumption, or we have been told, members of the metropolitan police departments are —

MR. LEICHTFUSS: Objection as to anything that was told by people outside —

THE COURT: Sustained as to what you have been told in that respect. That may be stricken, and the jury is instructed to disregard it.

MR. SEMENAS:

Q. What did you do after you went to Honeck's Garage?
A. I looked in the car that the defendant had rented.

Q. Did you find anything in this rented car?

MR. LEICHTFUSS: May it please the Court, at this point in time, I have some voir dire examination I would request of the Court of this witness in the absence of the jury.

[47] THE COURT: All right, you may take the jury out, please.

Whereupon the jury retired from the courtroom and the following proceedings were had in the absence and outside the hearing of the jury:

MR. LEICHTFUSS: Judge, what I am attempting to do by inserting the request at this time is to advise the Court that on the basis of our former hearing and a ruling by the Court, this is one of the officers from Washington County who was about to be asked questions with reference to a search of a vehicle in Washington County. We submit that unless it is clearly established that there are reasonable grounds for this that this testimony should not be heard by the jury, and we, therefore, would request this privilege of voir diring this witness in the absence of the jury so that the Court's decision, based on the testimony, is not based on testimony heard by the jury unless the Court so holds.

THE COURT: What do you have here that you didn't have in your motion to quash?

MR. LEICHTFUSS: The officer.

THE COURT: He was available to you at that time, wasn't he? Wasn't the burden upon the parties bringing the motion?

MR. LEICHTFUSS: The Court recited in its decision, on the basis of the evidence produced, that the original search of the Thunderbird was a routine police procedure.

THE COURT: What page?

[48] MR. LEICHTFUSS: Page 3, your Honor. "That the original search of the Thunderbird was a routine police procedure, when they were charged with the responsibility of safekeeping of the defendant's property pending his release and return of his property to him." We contend there is no establishment of that fact, and that while —

THE COURT: You mean at the time the testimony was taken on the motions?

MR. LEICHTFUSS: Correct.

THE COURT: No establishment of that fact?

MR. LEICHTFUSS: No establishment in that record that shows any responsibility on the part —

THE COURT: Show me in the record.

MR. LEICHTFUSS: I don't have a record, Judge; I don't have a transcript of the proceeding. Then a recent Supreme Court case came down between the time of this motion, your Honor, and today, which I would like to direct the Court's attention to and respectfully submit that with this information, plus what I have considered to be this officer's testimony that there is no establishment of a basis for the search of this 1967 Ford Thunderbird; so, in effect, we are renewing the motion to suppress.

THE COURT: I read the case you are referring to.

MR. LEICHTFUSS: Which one?

THE COURT: In the last advance sheets.

[49] MR. LEICHTFUSS: Dyke vs. Taylor Implement Co?

THE COURT: There was some guy by the name of "Pee Wee" and — I remember it more by that than by name. You may proceed with your voir dire examination.

EXAMINATION By Mr. Leichtfuss

Q. It is a fact, is it not, that when you went back out to the scene of this accident, you looked in the automobile that you have described as a 1967 Ford Thunderbird; isn't that true? A. Yes, sir, that's right.

Q. When you were searching that vehicle, you had no search warrant, did you? A. No, sir.

Q. And you did not have the consent of the defendant, did you? A. No, sir, we did not. I did not.

Q. What time was it that you went back out to the scene of the accident? A. From memory I would say 2:28 a.m.

Q. About 2:28 a.m.? What time was it that you had arrested the defendant? A. From memory I would say 11:58 or 11:57 p.m.

Q. You had removed the defendant from the scene of the accident, had you not? In other words, you took him out there, and then left the scene with the defendant? A. Yes, sir.

[50] Q. The car stayed there? A. No, sir.

Q. What happened to the car? A. We called a wrecker.

Q. You did? A. Yes, sir. We radioed to the Sheriff's Department to have them call a wrecker.

Q. And somewhere along the line you were advised the wrecker picked up the car and had taken it to the garage you described as Honeck's? A. No, sir.

Q. Somebody had to tell you where the car was? A. No, sir.

Q. You knew where the car was? A. Yes, sir.

Q. Somebody had to tell you that, didn't they? A. No, sir, the wrecker came to the scene of the accident while we were still there, and we observed the wrecker pull the car in.

Q. The car left the scene of the accident before you did? A. At the same time.

Q. You took the defendant to the West Bend Police Station eventually, and then subsequently to the hospital; is that correct? A. Yes, sir.

Q. So approximately two to two and a half hours later you went [51] back to the garage that the wrecker had come from, is that true? A. Yes, sir.

Q. And it was at that time you then looked into the automobile? A. Yes, sir.

Q. When you looked into the automobile you did not have — Strike that. Did you look into the trunk of the automobile? A. Yes, sir.

Q. Was it locked? A. Yes, sir.

Q. And you said that the defendant at this time was under arrest for drunken driving; is that right? A. Yes, sir, that's correct.

Q. Do you know if anybody from the Sheriff's Department remained with the automobile at all times? Do you know whether or not any sheriff did? A. Yes, sir, I know.

Q. You know that one did? A. I know that one did not.

MR. LEICHTFUSS: That's all, your Honor.

THE COURT: Mr. Semenas?

EXAMINATION By Mr. Semenas

Q. What was your reason for searching this car?

MR. LEICHTFUSS: The reason is immaterial as far as we are concerned.

[52] THE COURT: Overruled; he may answer.

THE WITNESS:

A. I was looking for the defendant's service revolver.

MR. SEMENAS:

Q. Did you find any articles in this car? A. Yes, sir, I did.

Q. Did you find any revolver? A. No, sir, I did not.

Q. Is this standard procedure in your police work?

* * *

THE WITNESS:

A. Yes, sir, it is standard procedure in our department.

MR. SEMENAS:

Q. Officer Weiss, after you made a search of this Thunderbird, 1967 Thunderbird, that was involved in the accident, what did you do? What did you find?

THE COURT: You don't have to go into that at this stage. No reason we can't go into that before the jury. I don't see anything that the defense brought forth that would vary the court's previous determination.

MR. LEICHTFUSS: May I cite a case?

[53] THE COURT: Better if you handed me the case than to read the quote.

MR. LEICHTFUSS: It is 88 Supreme Court, 1472. I respectfully direct the Court's attention to Page 1475. I have the following quotes from that case that I think are significant. They refer to the Preston Case, which the Court is familiar with, which holds, under such circumstances when a car search is conducted while the defendant is in custody, they held the search to be remote in time or place to be incidental to the arrest. The case is significant to these facts, in my judgment, which are new facts to this Court in that it has been established that this officer had the defendant in custody; they removed him to the police station, and it was some 2½ hours later at an independent garage that the search was conducted of a car that had not been retained in custody or control by the Sheriff's Department. Then I have reference from this case, and it is reference to the Cooper case — vs. State of California — which is the case I think this Court also is familiar with in which the police department in California had impounded a car pursuant to a statute when the car was

suspected of being involved in the transportation of contraband. The Supreme Court said under those circumstances that the police department then had a right to search the automobile which they had impounded pursuant to law. Their conclusion then is that to search cars without warrants require that the officers conducting the search have "reasonable or probable cause" to believe [54] that they will find the instrumentality of a crime before they begin their warrantless search. This officer's own testimony is he wasn't even looking for anything connected with the arrest for drunken driving. This was simply a vehicle belonging to a person in the custody of the West Bend, Washington County, Traffic Department, and they had gone out on a general exploratory search of a locked vehicle, and under the guise of looking for some service revolver which has nothing to do whatever with the offense for which this defendant was in custody. It is remote in time and with a warrant, and the defendant is clearly under arrest. So we contend anything obtained in that search is clearly contaminated and not admissible in court.

THE COURT: The Court's ruling will stand. Bring the jury back. The Court sees that nothing developed here this morning that it did not have before it at the time the motions were passed upon by the Court that would materially cause the Court to alter its determination.

Whereupon the jury returned to the courtroom at 10:15 a.m., and the following proceedings were had in the presence and hearing of the jury:

MR. SEMENAS: (Continuing) —

Q. What did you do when you arrived at Honeck's Garage in Kewaskum? A. I looked into the car.

[55] Q. What car? A. The car that the defendant was driving when he had the accident.

Q. What type of car was this that you searched? A. A 1967 Thunderbird.

Q. Do you recall what color this 1967 Ford Thunderbird was? A. No, sir, not offhand.

Q. What did you find when you searched the 1967 Ford Thunderbird, to the best of your recollection? A. On the floor of the front of the car —

MR. LEICHTFUSS: Excuse me. I want my objection noted in the record.

THE COURT: It is noted. Overruled. You may answer.

THE WITNESS:

A. On the floor in the front of the car on the right-hand side I found a Rules and Regulations Book of the Chicago Police Department. On the console — this was a car with twin seats — in between the two seats — there was a flashlight with a few spots of blood on it.

MR. LEICHTFUSS: I object to that conclusion unless it is shown this witness is in a position to determine what it was.

THE COURT: The objection is sustained. Sounded like a conclusion.

MR. SEMENAS:

Q. What did it appear to be? A. Blood.

[56] Q. And after you found this flashlight, then what did you do? A. I looked through the remainder of the inside of the car. I found nothing of any importance.

Q. Then what did you do? A. I then opened the trunk of the car.

Q. And did you find anything in there? A. Yes, sir, I did.

* * *

MR. SEMENAS:

Q. What did you find in this 1967 Ford Thunderbird that was at Honeck's Service Station in Kewaskum? A. Upon opening the trunk, I found a pair of what appeared to me to be uniform pants, blue in color, with a thin white stripe down the leg. I found a pair of casual pants, gray in color. I found a policeman's night stick with the name "Dombrowski" stamped on it.

Q. Dombrowski? A. "Dombrowski" was stamped on this policeman's night stick. I [57] found a raincoat which also appeared to me to be a uniform raincoat because it had a badge holder on the left-hand side near where your heart would be. I found a floor tarp, from what I assumed to be —

MR. LEICHTFUSS: We don't want assumptions. We object to the assumptions.

THE COURT: Objection sustained.

MR. SEMENAS:

Q. What did this appear to be, this floor mat? A. Floor tarp from the inside of a car.

Q. Do you recall, of your own knowledge, any other items? A. I found a box, cardboard box, in the car which had numerous items in. It had a penknife, undershirt, hotsheet from the Chicago Police Department —

Q. After you discovered these items, Officer, Weiss, what did you do? A. I took all the items I found in the trunk and in the car and put them in the trunk of my police car. I took them to the Sheriff's Office in West Bend.

Q. Why did you put these items in your police car?

MR. LEICHTFUSS: The "Why" is immaterial, your Honor.

THE COURT: Overruled. He may answer.

THE WITNESS:

A. All of the items that I mentioned previously had blood on them.

MR. LEICHTFUSS: We object to that. It is a conclusion on the part of this witness.

[58] THE COURT: Sustained.

MR. SEMENAS:

Q. What appeared to be on these items?

THE WITNESS:

A. Blood.

Q. And what did you do with these items after you placed them in your squadcar? A. I drove to West Bend, and I took them to the Sheriff's Office, and I locked them in the Detectives' Office.

Q. Why did this substance, in your mind, appear to be blood?

MR. LEICHTFUSS: That's immaterial, your Honor. We object to the form of the question.

THE COURT: Ask him to describe what he saw.

MR. SEMENAS:

Q. Describe what you observed on these items? A. The items were all saturated red.

THE COURT: What?

THE WITNESS: Saturated red in color.

MR. SEMENAS:

Q. In what state was this substance on these items? A. Some of it was dried and some of it was wet.

Q. Do you recall now which items were wet? A. The floor tarp still had a wet red substance on it.

Q. What did you do with these items after you placed them in your vehicle? A. Took them to the Sheriff's Office in West Bend, and I locked [59] them in the Investigators' Room.

Q. What did you do after you locked these items in the Investigators' Room? A. I then went back to the hospital.

* * *

(Recess taken at 10:23 a.m.)
(Jury retires from the courtroom)

* * *

[60] During said recess, the following exhibits were marked for identification by the court reporter as State's Exhibits:

1 — Uniform trousers
2 — Gray trousers
3 — Raincoat
4 — Night stick

5 — Cardboard box
6 — Hotsheet & Misc. papers
7 — Letter opener
8 — T-shirt
9 — Glove
10 — Coat hanger
11 — Rules & Regulations Book (Chicago Police)
12 — Plastic pail with towel inside
13 — Auto floor mat

The trial of the above-entitled matter was resumed pursuant to the recess last above noted at 10:50 a.m.; all parties present. Jury in box.

Mr. Weiss resumes the stand.

DIRECT EXAMINATION (Continuing) — By Mr. Semenas

Q. Officer Weiss, I now show you what has been marked as State's Exhibit 1 and ask you what this is? A. Pair of uniform pants — police uniform pants.

[61] Q. Have you seen these prior to this time? A. Yes, sir, I have.

Q. Where did you see them? A. I saw them in the trunk of the 1967 Ford Thunderbird.

Q. And when was this? A. At about 2:28 a.m. the morning of September 12th, 1967.

* * *

Q. Officer Weiss, I now show you what has been marked as State's Exhibit 2 for identification; could you tell me what this purports to be — what it appears to be to you? A. Pair of casual pants — sport pants.

Q. Have you seen these prior to this time? A. Yes, I have.

[62] Q. Where did you see this item? A. In the trunk of the 1967 Ford Thunderbird at Honeck's Garage.

Q. When was this? A. The morning of September 12th, 1967.

Q. Now, Officer Weiss, I show you what has been marked as State's Exhibit 3 for identification; could you tell me what this appears to be? A. Appears to be a raincoat.

Q. And have you seen that item prior to this time? A. Yes, sir, I have.

Q. And where did you see this item? A. In the trunk of the 1967 Ford Thunderbird.

Q. And on what date was that? A. September 12th, 1967.

Q. Now, Officer Weiss, I show you what has been marked as State's Exhibit 4 for identification; could you tell me what that purports or appears to be to you? A. A policeman's night stick.

Q. Have you seen that item prior to this time? A. Yes, sir, I have.

Q. Where did you see it? A. In the trunk of the 1967 Ford Thunderbird.

Q. Where? A. At Honeck's Garage.

Q. And what date was that? A. September 12th, 1967.

[63] Q. I now have Exhibits 5 through 10 inclusive; this is going to be difficult. Officer Weiss, I show you what

has been marked as State's Exhibit 5 for identification. What does this appear to be to you? A. A box. A cardboard box.

Q. And where did you see this box? A. That was in the trunk of the 1967 Ford Thunderbird at Honeck's Garage.

Q. When? A. September 12th, 1967.

Q. I show you what has been marked as State's Exhibit 6 for identification, and would you tell me what this appears to be to you? A. It appears to be a hotsheet from a police department.

Q. When did you first see these? A. When I looked in the trunk and found the box that was in a box.

Q. Where was this at? A. In the trunk of the 1967 Ford Thunderbird parked at Honeck's Garage on September 12th, 1967.

Q. Now, I show you what has been marked as State's Exhibit 7 for identification, and I ask you what this appears to be? A. Letter opener or a penknife.

Q. Have you seen this object prior to this time? A. Yes, sir, I have.

[64] Q. When did you first see it? A. I saw that in the box on September 12th, 1967, in the trunk of the 1967 Ford Thunderbird parked at Honeck's Garage.

Q. Now, I show you what has been marked as State's Exhibit 8 for identification, and would you tell me what this appears to be to you? A. Appears to be a white undershirt.

Q. And where did you first see this item? A. I first saw that item in the box in the trunk of the car, of the 1967 Ford Thunderbird, parked at Honeck's Garage on September 12th, 1967.

Q. Now, I show you what has been marked as State's Exhibit 9 for identification; would you tell me what that appears to be to you? A. Some sort of a glove.

Q. When did you first see this item? A. I saw that on September 12th, 1967 in the cardboard box in the trunk of the car parked at Honeck's Chevrolet.

Q. That's located where? A. Kewaskum, Wisconsin.

Q. Now, I show you State's Exhibit 10 that has been marked for identification and ask you what that purports to be? A. Coat hanger.

Q. When did you first see this item? A. In the early morning of September 12th, 1967.

Q. Where? A. In the cardboard box in the trunk of the 1967 Ford [65] Thunderbird parked at Honeck's Garage in Kewaskum, Wisconsin.

Q. Officer Weiss, now I show you what has been marked as State's Exhibit 11 for identification; would you tell me what that appears to be to you? A. A rules and regulations book of the Chicago Police Department.

Q. When did you first see that item? A. Early morning of September 12th, 1967.

Q. And where did you see this item? A. On the floor of the front seat of the 1967 Ford Thunderbird parked at Honeck's Garage, Kewaskum, Wisconsin.

Q. Officer Weiss, now I show you what has been marked as State's Exhibit 12; would you tell me what that appears to be to you? A. Plastic pail with a terrycloth towel inside.

Q. When did you first see these items? A. On September 12th, early morning of September 12th, 1967.

Q. Where did you see these items? A. That was in the trunk of the 1967 Ford Thunderbird parked at Honeck's Garage in Kewaskum, Wisconsin.

Q. Now, could you step down from the stand. (Witness leaves the stand). I show you what has been marked as State's Exhibit 13 for identification. Would you tell me what that appears to be? A. Appears to be a floor mat from a car.

Q. Have you seen this item previous to this time? A. Yes, sir, I have.

[66] When did you first see this? A. Early morning of September 12th, 1967.

Q. Where did you see this item? A. In the trunk of a 1967 Ford Thunderbird parked at Honeck's Garage in Kewaskum. (Witness returns to the witness stand).

Q. Officer Weiss, what did you do with the items marked Exhibits 1 through 13 for identification after you found them at Honeck's Garage? A. I put them in the trunk of my police car, and I took them to the Sheriff's Office in West Bend, and I locked them in the Investigators' Office.

* * *

CROSS-EXAMINATION By Mr. Leichtfuss

Q. Mr. Weiss, you say you are a traffic officer for Washington County, and were on September 11th, 1967? A. Yes, sir, that is right.

[67] Q. When did you start that job? A. April 1st, 1967.

Q. So you had been a traffic officer employed in that capacity since April of that year; is that right? A. Yes, sir, that is correct.

Q. And at the time, on the date of September 11th, 1967, you had been working the 7:00 p.m. to 4:00 a.m. shift? A. Yes, sir, that is correct.

* * *

[76] Q. Do you know who was driving the car when it got down there? A. The defendant told me he was.

[77] Q. When did he tell you that? A. On the way out to the accident scene.

Q. From Kewaskum? A. Yes, sir.

Q. Did he say that was the car he was driving? A. Yes, sir.

Q. Was he willing to have you take him out there and for him to show you the car? A. No, sir.

Q. Was he incoherent at this time? A. No, sir.

Q. Was he, in your opinion, intoxicated? A. Yes, sir.

Q. Did you have any reason to suspect that what he was telling you was not truthful? A. No, sir, I did not.

Q. In fact, with his assistance you arrived at the scene of this accident, didn't you? A. With his and the assistance of another party.

Q. But you got to the scene of the accident? A. Yes, sir, we did.

Q. How long did you stay out there? A. We arrived at the accident scene at 11:10 — at 11:33 we left the accident scene.

Q. When you left the scene of the accident, you say the car had been towed out of the area, but you observed it when you arrived; is that correct? [78] A. Yes, sir, that is right.

Q. So it was approximately three hours after you left the scene of the accident that you later went back and searched the automobile at Honeck's Garage; is that correct? A. It wasn't three hours.

Q. Well, I thought it was about 11:30 to 2:30, wasn't it? A. No, sir, it wasn't that long.

Q. What time did you leave the scene of the accident? A. 11:33.

Q. You said, didn't you, that you searched the car at approximately 2:28? A. That was without my notes, sir, that was a guess.

Q. What time was it? A. 2:13 a.m.

Q. So I am 17 minutes off or so, right? A. Yes, sir.

Q. Were you alone when you searched the car? A. Yes, sir.

* * *

TESTIMONY OF DR. RICHARD F. SORENSEN, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County.

[85] RICHARD F. SORENSEN, called as a witness herein on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

* * *

[86] Q. Would you continue as to what you recall from the early morning hours of September 12th, 1967? A. I received a phone call at my home I would say approximately 1:50 a.m. from the nurse in the emergency room at the [87] hospital, stating she had a man who was involved in an accident and was requesting medical care; and, since I was on call that evening, I was called. I talked to the nurse, and later I talked over the phone to the patient they had brought in; he told me he had been involved in an accident; he thought he had a head injury; he thought he should be seen by a physician, and thought he should be in the hospital that night. I came to the hospital and arrived very close to 2:00 a. m.

Q. Where did you first see him at the hospital — the person by the name of Chester Dombrowski? A. Emergency Treatment Room.

Q. What did you do after you observed him? What did you in the Emergency Room when you observed Chester J. Dombrowski? A. First of all, I tried to elicit the story of the accident again; but, at this particular time, the patient was completely uncommunicative. He said not one understandable word — seemed to be very, very sleepy from which we could not arouse him; he didn't seem to be

comatose. I did examine him very carefully at the time; and, then, since we had his identification, we made a long-distance phone call to his wife to try to find out more about the man's health or any condition that might account for this uncommunicative condition that the man demonstrated.

* * *

TESTIMONY OF BRUCE S. BOUDRY, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County.

[91] BRUCE S. BOUDRY, called as a witness herein on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

Q. Would you please state your name? A. Bruce S. Boudry.

Q. What is your address? A. Route #2, West Bend – Sandy Acre Road.

Q. What is your occupation? A. Deputy Sheriff, Washington County.

Q. Were you a Deputy Sheriff for Washington County on Monday, September 11th, 1967? A. Yes, sir, I was.

Q. Do you recall what hours you were on duty on Monday, September 11th, 1967? A. My hours at that time were from 7:00 p.m. at night until 3:00 in the morning of the next day.

[92] Q. That would be what date? A. From the 10th to the 11th — and 11th to the 12th.

Q. And who were you working with in the evening of September 11th, 1967, which is Monday? A. William Weiss.

Q. Did you have any occasion on the evening of September 11th to go to the vicinity of Kewaskum? A. Yes, sir.

* * *

Q. Who were you on duty with on September 11th, 1967? A. In the same squad with myself would be William Weiss.

Q. Did you investigate any accident on the evening of September 11th, 1967? A. Yes, sir.

Q. And where did you investigate this accident? A. In Washington County on Highway 45 approximately one mile north of Kewaskum at the county line.

Q. What did you observe when you went to this accident scene? A. When we got right to the car, is that what you want to know?

Q. Yes. A. We observed a late model Ford Thunderbird with a black top and maroon bottom.

[93] Q. Where was this car located? A. This car was in the ditch on the east side of Highway 45 and facing south.

Q. And what did you do after you arrived at the scene of this accident? A. I got the identification of the car, including the license number, and I took measurements from the car to a pole which was near by and to the bridge or to the road.

Q. What did you do just prior to arriving at the accident scene? A. Prior to the accident scene we went into Kewaskum to see if we could find the party who was involved in the accident.

Q. What did you do specifically? A. I went first from a tavern called Keller's; and, not finding the subject there, and being informed he was not there, I went across the street to the Glacier Inn.

Q. That is located where in Kewaskum? A. Right on the intersection of Highway 45 and 28, or Main Street in Kewaskum.

Q. What did you do after you went into the Glacier Inn? A. At first when I went in the door I observed four people at the bar — two people on the left at the end of the bar had drinks in front of them; one on the far right had a drink in front of him, and one man, near the center of the bar, and this man was along with the other four, and this man had no drink, and I asked all in the tavern at that time who had called the Sheriff's Department that was involved in an accident.

[94] Q. What did you do after you asked this question? A. Well, I didn't do anything until the man at the bar in the center stated that he was the one that called the Sheriff's Department that was involved in the accident.

Q. Now, do you see that man in the courtroom at the present time? A. Yes, sir.

Q. Would you point him out, please? A. Yes, sir, the man at the far right at the table over there.

MR. LEICHTFUSS: We will stipulate that the witness is referring to the defendant.

THE COURT: All right.

MR. SEMENAS:

Q. Did that person on the evening of September 11th, 1967, give you his name? A. Yes, sir.

Q. What did you do after this took place in the Glacier Inn with the person that you know as Chester J. Dombrowski? A. We asked him, or I asked him rather, to come with

myself out to the squad car, which was out in front, and go along with us to the accident scene so we could investigate the accident.

Q. Where was he seated in the car when you went out to the accident scene? A. He would be on the passenger side in the rear seat.

Q. Did you have any conversation with the defendant? A. Yes, sir.

[95] Q. Where? A. It started in the tavern when the man identified himself as Chester Dombrowski, and that he was a police officer in Cook County, Illinois, with the Chicago Police Department; and, at that time, he showed me a badge. Then we got to the car and we asked if there were any others involved—

MR. LEICHTFUSS: I object to the witness testifying as to "we" —

THE COURT: What you did, Mr. Boudry.

THE WITNESS:

A. It was my questioning, sir. I asked if there were any others involved in the accident, and he stated "no," that he was alone.

Q. Any other conversation on the way to the accident scene? A. (No answer).

Q. Do you recall any? A. I don't recall whether it was on the way to the scene of the accident or at the accident scene itself, but I asked what was the cause of the accident or how did it happen, and it was at the accident scene that the man gave us three different stories. One was that there was a jeep ahead of him that put on its brakes suddenly and

he swerved to avoid a collision, and that he went into the ditch. Another one was that there was a car approaching him in his lane and that he swerved to avoid a collision and went into the ditch. And the third story was that it was foggy that night, and he just missed the road and ran off of the road and into the ditch.

[96] Q. And how far was this accident, approximately, from the Village of Kewaskum? A. Approximately one mile.

Q. And what portion or what side of the road was this vehicle at the accident scene? A. Right at the accident scene there is a curve and a bridge, and the car struck the guard rail on the east or where it curves right. It could be classified as north east on the curve, and the car would have been going north and struck this guard rail, spinning around and ending up in the ditch on the east side of the road and on the south side of the river.

Q. What did you do after you made your observations and measurements at the scene of the accident? A. At the scene I wouldn't be sure who called, but the wrecker was called to remove the car; and, after the measurements were taken, and the wrecker was there, I searched the inside of the car just briefly because this man stated he was a police officer and had no gun on him, and I looked for this gun underneath the seat, in the glove compartment, in the back seat, and then locked the doors, and just prior to that, I put the car in neutral so the wrecker operator could pull it away, and then we took the driver to West Bend.

Q. Were you present at St. Joseph's Hospital in the early morning hours of September 12th, 1967? A. Yes, sir.

[97] Q. What time were you first present at St. Joseph's Hospital in West Bend in the early morning hours of September 12th, 1967? A. At exactly what time?

Q. Approximately what time? A. It was approximately 12:30.

Q. How long did you stay at St. Joseph's Hospital? A. I stayed there until — it would be 1:00 o'clock or shortly after 1:00 o'clock in the afternoon, and that would have been the 12th.

Q. Did you have any occasion to see Chester J. Dombrowski on September 12th while you were at St. Joseph's Hospital? A. Yes, sir.

Q. And where did you see him? A. I was with him constantly from when he was admitted to the hospital and taken to the emergency room, from the emergency room to the first floor to the room to which he was admitted, and I guarded him until I was relieved for breakfast or lunch, and then I would have gone for lunch for about an hour — and this time — I don't know if I could remember this time right now.

* * *

[99] Q. What were you doing outside the door? A. I was guarding the man who was in our custody.

* * *

TESTIMONY OF RAYMOND J. HOWARD, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County Court.

[237] RAYMOND J. HOWARD, called as a witness herein on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

Q. Would you please state your name? A. Raymond J. Howard.

Q. Where do you reside? A. 1410 E. Pioneer Road in the Town of Fond du Lac.

Q. What is your occupation? A. Undersheriff of Fond du Lac County.

Q. Were you the undersheriff for Fond du Lac County on September 12th, 1967? A. Yes, I was.

Q. Do you know of your own knowledge where the Dombrowski farm is located? A. Yes, I do.

Q. Did you have occasion to go to the Dombrowski farm on September 12th, 1967? A. Yes, I did.

[238] Q. Why did you go to the Dombrowski farm on September 12th, 1967?

MR. LEICHTFUSS: Immaterial as to "why"

THE COURT: I think that's true. Rephrase your question, please.

MR. SEMENAS:

Q. What did you do at the Dombrowski farm on September 12th, 1967? A. Met Washington County authorities and searched for a body.

Q. Did you make any other observations while you were at the farm on September 12th, 1967? A. Yes, I did. We examined the car.

Q. What car? A. 1960 Dodge owned by Chester Dombrowski.

MR. LEICHTFUSS: We object to that, your Honor.

THE COURT: The last portion of the answer may be stricken—the identification of the automobile being a 1960 Dodge may stand, and the jury is instructed to disregard at this stage the balance of the answer of this witness.

MR. SEMENAS:

Q. Where was this Dodge located on September 12th, 1967? A. The car? Q. Yes. A. Located on the northwest—off of the northwest section of the ramp leading into the barn.

Q. Do you know approximately how far that was from the barn? A. I would say from the barn it would be about 30 yards.

* * *

[462] RAYMOND J. HOWARD, called previously as a witness on behalf of the State, having previously been duly sworn, was examined and testified further as follows:

RE-DIRECT EXAMINATION By Mr. Semenas

Q. Please state your name and address? A. Raymond J. Howard, 1410 E. Pioneer Road.

Q. What is your occupation? A. Undersheriff of Fond du Lac County.

Q. Were you Undersheriff of Fond du Lac County on September 12th, 1967? A. Yes, I was.

Q. While you were on duty on September 12th, 1967, did you have any occasion to go to an area on County Trunk S & G, known as the Dombrowski farm? A. Yes.

MR. LEICHTFUSS: I object to the use of the word Dombrowski farm.

THE COURT: The answer was "Yes" and the answer may stand.

MR. SEMENAS:

Q. Mr. Howard, while you were at the Dombrowski farm on September 12th, 1967, did you make any observations of any vehicles? [463] A. Yes, there was a 1960 Dodge parked just north of the barn—northwest of the barn.

Q. Do you know what happened to that car on the evening of September 12th, 1967? A. Yes.

Q. To your knowledge? A. Yes, I had received a search warrant and an order to impound it, and I called the Olsen Service Station for a wrecker to come out and bring the car into the Safety Building.

Q. And was this car brought into the Safety Building? A. Yes, it was and impounded at the Safety Building.

Q. When did you see it next after seeing it on the Dombrowski farm on the evening of September 12th, 1967? A. I seen it in the early morning hours on the 13th, and around 8:00 a.m. on the 13th I took pictures. I took pictures in the garage in the Safety Building.

Q. Mr. Howard, do you know of your own knowledge under whose care, control and custody this car has been since September 12th, 1967? A. Under the Sheriff of Fond du Lac County.

Q. Do you know of your own knowledge where that car is at the present time? A. Yes.

Q. Where? A. Safety Building Garage — Sheriff's Department side.

[464] MR. SEMENAS: Your Honor, at this time the State would like to make a request.

THE COURT: Take the jury out, please.

Jury taken out of the courtroom at 11:20 a.m., and the following proceedings were had outside the presence and hearing of the jurors:

THE COURT: You may proceed.

MR. SEMENAS: Your Honor the request the State would like to make at this time is to go over to the Safety Building on the County side and have the Dodge and the car seats marked as exhibits for identification.

THE COURT: Have the Dodge and car seats marked? Are the car seats removable?

MR. SEMENAS: They could be brought up here, yes.

THE COURT: They will be brought into Court then, and the Court will direct this witness to remove the car seats and bring them into court. The balance of your request is to view the Dodge?

MR. SEMENAS: That is correct and have it marked as an exhibit for identification.

MR. LEICHTFUSS: May I be heard on that?

THE COURT: Surely.

MR. LEICHTFUSS: First of all, to my knowledge, there is no evidence in this record that in any way ties up that

Dodge [465] to the defendant, Mr. Dombrowski, and, therefore, in my judgment to permit a viewing of a Dodge or car seats or any identification of that car other than the fact that it is a car removed from the farm area is wholly immaterial and can prove to be very prejudicial as far as the defendant is concerned.

THE COURT: This vehicle was towed from somewhere on the highway, together with the defendant, at his request. I am trying to recall without checking my notes. It was towed by this garage man to this location on this farm, was it not?

MR. LEICHTFUSS: This vehicle, your Honor? Yes.

THE COURT: At the request of the defendant?

MR. LEICHTFUSS: Yes, that's true.

THE COURT: You feel that is not sufficient to tie this automobile in with the defendant — the defendant having some control over this vehicle to some limited degree at or about the approximate time that the offense is alleged here?

MR. LEICHTFUSS: Definitely, because there is no evidence to show that the defendant has any connection with that automobile other than the request that it be towed into the farm owned by his brother, Bernard Dombrowski.

THE COURT: The defendant was seen in this automobile sleeping at one time or seen sitting in the automobile by at least one other witness.

MR. LEICHTFUSS: I don't recall that testimony, judge.

[466] THE COURT: Who was that witness?

MR. SEMENAS: That was Beverly Richards. Your Honor, she was the waitress at the Fin-N-Feathers. She testified just after Mrs. Hatch.

THE COURT: That doesn't mean anything to me. Let's go off the record.

Brief discussion off the record at 10:25 a.m.

THE COURT: A vehicle was picked up. Do you feel that isn't sufficient identification?

MR. LEICHTFUSS: I don't think sufficient identification or connection between the defendant and that vehicle to permit evidence from that vehicle.

THE COURT: He was in it and exercised control over it at the time that the garage man was there, and he designated the place to where it was to be hauled to.

MR. LEICHTFUSS: She saw the defendant in a old greenish car as my notes show; nothing in my notes that say that this is the car for instance that was towed off. I don't know. Furthermore there is no showing that this defendant did anything other than have that car towed in according to the record. I have a couple of other questions I would like to ask this witness.

MR. SEMENAS: Well, the call for the wrecker was made from Lake Seven by this one witness that testified, and the garage operator testified that this person went back with him [467] to the same area that the waitress, Mrs. Richards, testified that she observed the defendant in this automobile. This same person testified that the defendant said his car was disabled or stuck, and as he went to church with his wife and grandchildren he noticed this car was there, same spot that the Richards woman said, same area between the Fin-N-Feathers and Lake Seven. And this same car was taken subsequently — the same car was taken, and no other vehicles were observed by anyone.

MR. LEICHTFUSS: That we don't know.

MR. SEMENAS: From the testimony we have in the record, no one observed any other vehicles. And also the Norskog boy testified that this same vehicle that he saw was towed in next to the barn — same vehicle that he had seen towed in.

THE COURT: The Court is of the opinion that the vehicle is sufficiently identified as having been under the control of the defendant, Chester Dombrowski, at a time interval sufficiently close to the alleged offense; that the vehicle or items from it may be material in this proceedings. Now you may be permitted to bring the car seats into Court, and we will have them marked as exhibits. The balance of your request is what, Mr. Semenas?

MR. SEMENAS: Well, I figure it would be rather difficult to bring the car in.

[468] THE COURT: I would think so.

MR. SEMENAS: We could go down and have it marked for identification as an exhibit down there. As the testimony shows, it is on the County side of the Safety Building near the ambulance.

THE COURT: Any reason why a colored photograph of the vehicle could not serve the same purpose?

MR. SEMENAS: Well, I just thought it would be the best evidence; we do have it there.

THE COURT: You ask purely for an external view of that vehicle; is that correct?

MR. SEMENAS: That's all. External view, yes.

THE COURT: What is your position on that, Mr. Leichtfuss?

MR. LEICHTFUSS: Well, judge, in my judgment, we are getting into a very dangerous area. This particular vehicle, as far as for purposes of indicating that the defendant on the 10th of September had control of that vehicle and carrying that over as being material to the crime alleged in the indictment is a gap — There is a gap in there that I think is being dangerously bridged on the basis of insufficient identification of the ownership of that car. Secondly, as far as I am concerned—

THE COURT: This may very well be true. The Court does [469] not contemplate trying to close all gaps by one particular incident or permitting one exhibit to be received into evidence. It appears to the Court that the State's course of presenting this matter has been, to some extent thus far, circumstantial — and the incidents that at least allegedly to have occurred prior to the crime that is charged. It appears to this Court that it should be received by the Court where there is an association directly or indirectly to the defendant, and that's my view of the automobile right now.

MR. LEICHTFUSS: I don't mean to argue with the Court, but I am—

THE COURT: Go ahead.

MR. LEICHTFUSS: I am having this problem. You see the Dodge we refer to or referred to in some testimony as being an old greenish car—And the little Norskog boy says it is a Buick or a Dodge. All through that identification there is no establishment of any connection between Dombrowski and that car other than the fact that it was he who

supposedly brought the tow truck operator in that hauled the car to the farm — Nothing to say in this record that that car was his.

THE COURT: Doesn't have to be, does it?

MR. LEICHTFUSS: We are only trying Chester Dombrowski here.

THE COURT: It could be a borrowed car or a stolen car that he had contact with.

[470] MR. LEICHTFUSS: The only contact is established on the 10th of September, 1967, which, in my judgment, precedes any allegation that we are in court to defend against here. There is no tie up with that car, this defendant, and what we are in court for. Now I have one other point I would like to make on it, judge. The search warrant indicates that Mr. Howard at 8:15 on the 12th of September got a search warrant. The Court was taking judicial notice of this search warrant, and I would like to point out the fact there is no order in this search warrant to impound the car; secondly, we have testimony that puts Mr. Howard at the scene of this car at 8:15.

THE COURT: Right, that's Mr. Whealon's testimony. The court record, however, shows the proceedings taking place on September 12th, 1967, at 8:02 p.m., right? And the search warrant was dated and the time was 8:15 p.m. on the 12th, right?

MR. LEICHTFUSS: 8:15, September 12th, is what I have.

THE COURT: On the original document— This Court at this time is taking judicial notice of that particular search warrant as long as the matter has been raised before the Court.

MR. LEICHTFUSS: The order, according to Mr. Whealon's testimony, to go and pick up a car was made at 7:30 p.m.

THE COURT: That is right.

[471] THE COURT: I believe his testimony was that he actually picked it up at 9 and hauled it back and delivered it at 10:00.

MR. LEICHTFUSS: Received a call at 7:30 and arrived at 8:15 p.m., and said later "give or take 15 minutes" — What I am suggesting, of course, is not only were the actions of the wrecker such that they were being made pursuant to directions issued prior to the issuance of any search warrant which would contaminate the impounding of the car, but further, Mr. Howard's own testimony is not consistent with this document; there is no order in there to impound that vehicle.

THE COURT: Going to Page 4 of the transcript, the magistrate who was Judge McEssy in that proceedings, Hazen McEssy, stated on Page 4: "This Court hereby authorizes the issuance of a search warrant to Undersheriff Raymond Howard to search both vehicles and impound the same and make a report to this court as to his findings within the next 48 hours." Now, obviously, that comment by the magistrate at that time had reference to the Dodge as one of the vehicles located on the Dombrowski farm. Then, on the 14th day of September, Mr. Howard appeared before Judge Hazen McEssy and advised the court that they had searched the vehicle pursuant — On page 1 of the transcript — pursuant to the warrant and had impounded the vehicle in the Safety Building Garage in Fond du Lac. Now, this court is of the opinion that items within a vehicle of this nature and specificially under the circumstances, the interior of the vehicle could very

[472] well be evidence which they were authorized to search the interior of this vehicle for; items attached to the vehicle may very well be such it wouldn't compel the searching authority to segregate those items from the vehicle itself. What I am referring to is upholstery and things of that nature. So it appears to this Court that under the circumstances, the search warrant directed to the 1960 Dodge, which is sufficiently identified, and the act of impounding the Dodge in the Safety Building pursuant to said search warrant, more specifically after the searching authority reported to the court, that they had so done, and it was subject to review by the court at the time of the searching authority making such report, that the vehicle is properly within the authority of the search warrant and properly within the custody of the Sheriff's Department.

MR. LEICHTFUSS: May I say one word?

THE COURT: Yes.

MR. LEICHTFUSS: It appears patently obvious what was done here was that a search was conducted and an order was issued by the Sheriff's Department to impound the car, with that completed, they then go to the magistrate to get a search warrant.

THE COURT: You have the testimony of Mr. Whealon, and you are entitled to use the transcript here to impeach his testimony if you so desire. This Court has before it the [473] court record, which I have no reason to believe is other than as stated therein; and, so far as this Court is concerned from the preliminary testimony on motions and the testimony throughout this trial, this Court has no reason to disbelieve the court record, which it has now taken judicial notice of in this proceedings. The 1960 Dodge that is in the

custody of the Sheriff's Department may be marked as an exhibit. Now, the question is what do you want done with it — marked as an exhibit for identification?

MR. LEICHTFUSS: We object to any viewing unless it is in evidence.

THE COURT: It will have to be done. I would suggest that we take any proceedings had in connection with that automobile be in the absence of the jury from the standpoint of identification of it; and, then, subject to the Court's ruling in that respect, it would be determined whether or not they would be permitted to view it. If it is received, they, of course, would be permitted to view it.

MR. SEMENAS: That is satisfactory with the State.

THE COURT: We will do that at 1:30; rather than convene here in court, counsel and the defendant, clerk and the reporter, and the witness will convene in the garage of the Safety Building. We will proceed with the testimony for purposes of identification at that time. The automobile seats you can have brought here to court. The witness is so instructed [474] at the time we view this automobile for purposes of identification he will remove them in the Court's presence — the seats that may be brought to court for subsequent identification.

MR. SEMENAS: That is satisfactory with the State.

THE COURT: All right. Would you ask the bailiff to come in, please. We will recess at this time for the noon luncheon. We will stand recessed until 1:30 at which time we will convene at the Safety Building.

(Recess for lunch, 11:45 a.m.)

The following proceedings took place in the Safety Building Garage, 1:30 p.m., July 15th, 1968, outside the presence of the jurors:

Appearances: Court, Clerk, Reporter, all attorneys and the defendant, Sheriff & Undersheriff.

THE COURT: Mr. Howard was the last witness on the stand, and he is present here. The State has made a request relative to the blue Dodge that is in the custody, according to the testimony, of the Sheriff of Fond du Lac County. The request is to have the same marked as an exhibit; is that correct?

MR. SEMENAS: That is correct, your Honor. An exhibit for identification.

[475] THE COURT: May I ask this question, which I think we discussed this morning. Does the State have a colored photograph of this vehicle that would be adequate – at least one or more?

MR. SEMENAS: We would like to have the car marked. That is our opinion right now.

THE COURT: All right.

Whereupon the 1960 Dodge was marked for identification as State's Exhibit No. 40.

THE COURT: Do you have some questions you wish to ask of Mr. Howard?

MR. LEICHTFUSS: I have a couple, your Honor.

THE COURT: We will let the State proceed first.

RE-DIRECT EXAMINATION By Mr. Semenas

Q. Mr. Howard, what has been marked as State's Exhibit No. 40 for identification, did you have occasion to see this vehicle on September 12th, 1967? A. Yes, I did.

Q. And where did you first observe this vehicle? A. On the Chester and Bernard J. Dombrowski farm.

MR. LEICHTFUSS: I object. There is a stipulation that at the time it was owned by Bernard Dombrowski.

[476] THE COURT: Objection sustained.

MR. SEMENAS:

Q. Where did you first observe this vehicle on that farm? A. This vehicle was a little northwest of the barn sitting in a field.

Q. And where on the farm was this vehicle when you first—Mr. Howard, where was State's Exhibit No. 40 for identification when you first observed it on the farm in the Town of Auburn, Fond du Lac County, Wisconsin, on September 12th, 1967? A. Sitting in a field just northwest of the barn.

Q. In what direction was that vehicle facing? A. North.

Q. Would you look over State's Exhibit No. 40 for identification?

(Witness looks over the automobile and opens the hood of same)

Q. Mr. Howard, after looking over State's Exhibit No. 40 for identification, do you state this is the same vehicle you observed on the Dombrowski farm — on this farm — in the Town of Auburn, Fond du Lac County, Wisconsin, on September 12th, 1967? A. Yes.

Q. How do you know it is the same vehicle? A. One thing, the hole in the radiator — blood on the back seat –

MR. LEICHTFUSS: I object to that.

THE WITNESS: What appears to be blood.

THE COURT: The answer may stand.

[477] MR. SEMENAS:

Q. Do you know of your own knowledge what happened to this vehicle? A. Yes, this vehicle was brought up to the Safety Building — County side of the Sheriff's Department Garage.

Q. Do you know who transported that vehicle? A. Yes, Patrick Whealon.

Q. Do you know in whose custody this vehicle has been since September 12th, 1967, up to the present time? A. Yes, the Sheriff of Fond du Lac County.

Q. Do you know of your own knowledge where the keys to this vehicle have been kept during this period of time? A. Yes.

Q. Where were they kept? A. By the Sheriff.

Q. And who do you mean by that? A. Harry Rozek.

MR. SEMENAS: That's all the questions I have, your Honor.

RE-CROSS EXAMINATION By Mr. Leichtfuss

Q. Mr. Howard, is the automobile in the same condition today as it was when you first observed it? A. No.

[478] Q. Would you tell us what is different about it? A. It is more rusted, and there is some paint off. I don't

know if that was there, but there was one dent in the car, but I don't know which one it was.

Q. Is the inside the way it was when you saw it first? A. The seats are all loosened.

Q. Any other differences? A. Floor mats removed; otherwise about the same.

Q. What time of the day on September 12th, 1967, did you first see this car? A. I would state it was about 3:45 or 4:00 o'clock.

Q. What time did you call Olsen's Wrecker Service? A. I don't recall.

Q. Has this car been here ever since it was towed in? A. No, it hasn't.

Q. Where was it kept when it was first brought in? A. Kept here first.

Q. Then where? A. Moved out to the County Garage and held at the County Garage.

Q. When was it brought in here? A. When was it brought back here? Q. Yes, sir. A. I believe last Friday.

Q. After the 12th of September, 1967, when did you next see the car? A. I seen it in the early morning of the 13th somewheres after 1:00 a.m., then the following morning again around 8:00 a.m.

[479] Q. When did you next see it after that? A. I don't recall; I saw it numerous times after that but —

Q. Did you check the car periodically when it was out at the County Garage? A. No, I didn't.

Q. Any doubt in your mind as to the color of this vehicle? A. No.

Q. Was the tire flat when you first saw it? A. No,

MR. LEICHTFUSS: That's all.

RE-DIRECT EXAMINATION By Mr. Semenas

Q. Mr. Howard, do you know of your own knowledge who took State's Exhibit 40 for identification out to the County Garage? A. Yes, Norman Olsen, Jr.

Q. Do you know who might have brought it back here? A. Last Friday?

Q. Yes. A. Patrick Whealon.

MR. SEMENAS: I have nothing further.

THE COURT: Are you going to have the seats extracted and marked as exhibits to be brought into court?

MR. SEMENAS: Yes.

[480] MR. LEICHTFUSS: May I ask a few more questions about this car with reference to Mr. Semenas' re-direct?

THE COURT: Right.

RE-CROSS-EXAMINATION By Mr. Leichtfuss

Q. You were present, Mr. Howard, when the car was removed by Mr. Olsen? A. No.

Q. You don't know of your own knowledge? Somebody told you; is that it? A. Well, I don't remember if I made the call or not to have him take it out there, but he said he would —

Q. You were not present when it was removed? A. No.

Q. Were you present when it was returned? A. No.

Q. So you don't know that of your own knowledge, do you? A. No.

MR. LEICHTFUSS: That's all.

THE COURT: Sheriff, is the vehicle locked now?

MR. ROZEK: Yes, it is, your Honor.

THE COURT: Would you unlock it, please, and permit the State to extract the items they wish to have separately marked and brought into court.

[481] Whereupon, the following exhibits were marked for identification:

State's Exhibit No. 41 — back seat of Dodge
State's Exhibit No. 42 — front seat " "
State's Exhibit No. 43 — back rest of back seat of Dodge

THE COURT: You may have the record show that in the Court's presence and the defendant's presence that at the Court's suggestion Mr. Howard removed what have been marked as State's Exhibits 41, 42 & 43, and the Court will charge Mr. Howard with the custody of those exhibits until such time as they are presented in court for further identification. There is no need to go any further in that respect.

MR. LEICHTFUSS: I think the record should show that the defense agrees with the description of the removal of those three exhibits.

THE COURT: All right. The vehicle has been relocked; is that correct, Mr. Rozek?

MR. ROZEK: Yes, your Honor.

THE COURT: Okay, we will go back to the courtroom then.

Proceedings resumed in the courtroom at 2:00 p.m. — all counsel present, defendant present, jury in the box.

* * *

[489] RAYMOND J. HOWARD, resumed the stand, having been previously duly sworn, was examined and testified further as follows:

RE-DIRECT EXAMINATION By Mr. Semenas

Q. Mr. Howard, you have been sworn before; is that correct? A. Yes.

Q. Would you state your full name?

MR. LEICHTFUSS: We will stipulate as to his name and occupation.

THE COURT: Same Mr. Howard that previously testified and I am sure the jury is aware of that, and the record may [490] so show.

MR. SEMENAS:

Q. Mr. Howard, there have been Exhibits Nos. 41 for identification, 42 for identification, and 43 for identification marked; would you come over and see if you can identify State's Exhibit 41 for identification?

(Witness leaves the stand and goes over to the exhibits).

A. Yes, this is the back seat from the 1960 Dodge.

Q. And would you identify State's Exhibit 42 for identification? A. This is the front seat and back — Exhibits 42 and 43.

Q. Front seat and back rest of the seat from what? A. 1960 Dodge.

Q. And would you explain State's Exhibit 43 for identification? Would you identify it? A. This is the back of the back seat of the 1960 Dodge — back rest.

(Witness resumes the stand).

Q. You brought them into court; is that correct? A. Yes.

Q. When did these items come into your possession?

MR. LEICHTFUSS: I think we have stipulated, your Honor, and we have no objection to the jury hearing that stipulation today.

THE COURT: During the period from 1:30 to 2:00 o'clock, the Court took testimony from Mr. Howard at the Safety Building Garage, at which time Exhibit 40 was observed, and then 41, [491] 42 and 43 were observed and marked in the presence of the parties — the defendant and counsel and the Court; and, since that time, they have been in Mr. Howard's custody and produced here in Court since we closed the testimony at the Safety Building Garage.

MR. SEMENAS:

Q. Mr. Howard, when was the first time that you saw State's Exhibit 41 for identification, State's Exhibit 42 for identification, and State's Exhibit 43 for identification? A. September 12th.

Q. September of what year? A. 1967.

Q. And where was this at that you made your first observation of these three exhibits for identification? A. On the Bernard Dombrowski farm.

Q. What was their location, these three exhibits, when you first observed them? A. They were intact in the automobile.

Q. What automobile? A. 1960 Dodge.

Q. What color? A. Blue.

Q. What happened after you first observed Exhibits 41 for identification, 42 for identification, and 43 for identification, if you know of your own knowledge?

[492] MR. LEICHTFUSS: I object to the form of the question unless I misunderstood. Do you mean what happened to these exhibits?

THE COURT: I don't know; rephrase your question, please.

MR. SEMENAS:

Q. Mr. Howard, do you know of your own knowledge when State's Exhibit 41 for identification, 42 for identification, and 43 for identification were taken out of the Dodge?

THE COURT: We just stipulated they were taken out between 1:30 and 2:00 o'clock July 15th, 1968, in the presence of the Court.

MR. SEMENAS:

Q. Mr. Howard, was there any previous time that you know of your own knowledge that Exhibit 41 for identification, 42 for identification, and 43 for identification were taken out of a 1960 Dodge that you observed on the Dombrowski farm? A. Yes.

Q. When was that? A. September 13th. Q. What year? A. 1967.

Q. Where? A. Safety Building Garage.

Q. Who removed these seats, do you know? A. I can't think of his name right now; he was from Henco Motors

[493] Q. Who was present at that time? A. Mr. Mauer from the Crime Lab.

* * *

Q. Mr. Howard, were Exhibits 41, 42 and 43 returned to you? A. Yes.

Q. When were they returned to you? A. December 19th, 1967, at the State Crime Laboratory in Madison.

Q. After the return of 41, 42 and 43 to you, Mr. Howard, what did you do with these items? A. Brought them back to Fond du Lac and put them back in the Dodge — 1960 Dodge.

[494] MR. SEMENAS: That's all the questions I have of this witness at this time. I would like to re-call him later.

THE COURT: Any cross-examination?

RE-CROSS-EXAMINATION By Mr. Leichtfuss

Q. Mr. Howard, where was this Dodge when you put the seats back in? A. In Mr. Olsen's lot where he keeps automobiles that he brings in from wrecks and so forth.

MR. LEICHTFUSS: That's all.

THE COURT: You may step down. You are admonished, relative to your testimony, not to discuss it with other prospective witnesses.

* * *

[590] RAYMOND J. HOWARD, resumed the stand, having been previously duly sworn, was examined and testified further as follows:

RE-DIRECT EXAMINATION By Mr. Semenas

Q. Would you please state your name? A. Raymond J. Howard.

MR. SEMENAS: Your Honor, at this time I would like to have him step down from the stand and look at State's Exhibits 41, 42, and 43 for identification.

Q. By "lot" what do you mean? A. The car was locked after the seats were put in, and the key was returned to the Sheriff.

MR. LEICHTFUSS: That's not responsive.

THE COURT: Not responsive, and the jury is instructed to disregard it. Rephrase your question, please.

MR. SEMENAS:

Q. Do you know where State's Exhibit 41 marked for identification was kept from December 19th, 1967?

[594] MR. LEICHTFUSS: We object to that question, your Honor; it is the same question asked earlier.

THE WITNESS: Yes.

THE COURT: He answered "Yes." The answer may stand.

MR. LEICHTFUSS: I notice the bailiff is pointing to somebody at your table for a telephone call.

THE COURT: We are running a court here; we are not running a telephone answering service. Explain and tell the party to call back some other time.

MR. SEMENAS:

Q. Where was it kept?

THE WITNESS:

A. In the 1960 Dodge.

MR. LEICHTFUSS: I object again unless that foundation is laid, and this is also repetitious.

THE COURT: Just wait a minute, please. Mr. Cler, will you tell the operator downstairs we don't want any

telephone calls coming into this court either through the reporter's phone or to anybody else; I don't want any of these phones ringing. Read the question and answer back please.

Whereupon the following question and answer was read back:

QUESTION: Where was it kept?

ANSWER: In the 1960 Dodge.

THE COURT: The answer will stand.

MR. SEMENAS:

[595] Q. Mr. Howard, did you have any occasion to observe State's Exhibit No. 41 for identification after December 19th, 1967? A. Yes.

Q. After you obtained possession of State's Exhibit No. 41 marked for identification on the 19th of December, 1967, where did you place this item?

MR. LEICHTFUSS: Repetitious.

THE COURT: Sustained.

MR. SEMENAS:

Q. Mr. Howard, you have also looked at State's Exhibit 42 for identification; is that correct? A. Yes,

Q. And can you identify it? A. Yes, 42 is the front seat.

Q. And was State's Exhibit 42 for identification ever in your possession? A. Yes.

Q. And when did it come into your possession? A. When I first searched the car with the search warrant and impounded it.

Q. And did it ever come into your possession at a later date? A. Yes, when I picked it up at the State Crime Laboratory in Madison.

Q. And when was that date? A. December 19th, 1967.

[596] Q. After you obtained possession have State's Exhibit marked No. 42 for identification, what did you do with it? A. Returned it to Fond du Lac and put it in the 1960 Dodge.

Q. Now, Mr. Howard, you have also looked at State's Exhibit No. 43 for identification; is that correct? A. Yes, I have.

Q. Can you identify it? A. Yes, that's the backrest of the back seat.

Q. Of what? A. 1960 Dodge.

Q. Which Dodge are you speaking of? A. Dodge I found on the Dombrowski farm.

Q. And did this ever come into your possession? A. Yes.

Q. When? A. When I searched the car and impounded it.

Q. That was when? A. September 12th, 1967.

Q. Did State's Exhibit 43 for identification also come into your possession at a later date? A. Yes, it did.

Q. When was that? A. December 19th, 1967, at Madison at the State Crime Laboratory.

Q. And after you re-obtained possession of State's Exhibit No. 43 for identification on December 19th, 1967, what did you do with it? [597] A. Returned it to Fond du Lac and put it in the 1960 Dodge. The 1960 Dodge recovered at the Dombrowski farm.

Q. And where was this car located on December 19th, 1967? A. At a car lot on East Scott Street in Fond du Lac.

Q. What type of lot do you mean? A. This is a lot where Mr. Olsen keeps cars that are in accidents and so forth, and they must be kept until the insurance and so forth is looked at. He has a gate there at his lot—

MR. LEICHTFUSS: I think the answer is going far beyond what is necessary to answer the question, and I object.

THE COURT: Overruled; it is a general description. Had you completed your answer?

THE WITNESS: Yes.

THE COURT: The answer may stand.

MR. SEMENAS: Your Honor, at this time I would like to move for the admission into evidence of State's Exhibits 41, 42, and 43 that have been marked for identification.

MR. LEICHTFUSS: Of course, we object, your Honor; there has been no showing of care, custody and control maintained over these exhibits from December 19th until we saw them yesterday, and they were not under the care, control and custody of the Sheriff out at some car lot; there has been no showing of any kind as to their condition then, their condition now—whether they fairly represent or depict what they claimed to depict on December 19th. All kinds of foundation questions have not been answered.

[598] THE COURT: Objection overruled. 41, 42 and 43 will be received. It appears to the court that all persons that had contact with these exhibits have been identified, and the chain is not broken as to the custody of 41, 42, and 43.

MR. SEMENAS: Your Honor, I have no questions of Mr. Howard at this time; I would like to recall Mr. Linssen.

THE COURT: Cross-examination?

RE-CROSS-EXAMINATION By Mr. Leichtfuss

* * *

Q. And the keys for the car were kept where? A. With the Sheriff.

Q. They were? A. As far as I know.

Q. You don't know, do you? A. No.

Q. So your answer to my question is "I don't know"? A. The last I know the Sheriff had the keys.

Q. Do you know where they were kept? [599] A. No.

* * *

[668] RAYMOND J. HOWARD, resumed the stand, having been previously duly sworn, was examined and testified further as follows:

DIRECT EXAMINATION By Mr. Leichtfuss

Q. Your name is Raymond Howard? A. Yes.

Q. You are the Undersheriff for Fond du Lac County? A. Yes.

Q. Would you tell us what that title means? A. I am right underneath the Sheriff.

Q. That's what it means? A. Second in command.

Q. Not all deputy sheriffs are called undersheriffs? A. No.

Q. How long have you been a member of the Sheriff's Department in one capacity or the other, Mr. Howard? A. Just about 15 years.

Q. And during that period of time have you also been Sheriff of Fond du Lac County? A. Yes.

[669] Q. Can you tell us when that was, please? A. For four years prior to a year and a half ago.

Q. You were the Sheriff prior to Sheriff Rozek? A. That is right.

Q. And prior to that 15 years were you also involved in law enforcement work? A. Undersheriff four years prior to being Sheriff, and I was a county traffic officer before that.

Q. You had a period of 15 years that you have been involved in law enforcement work? A. Yes.

Q. Prior to that time were you also involved in law enforcement? A. No.

Q. During the course of your employment, Mr. Howard, that you have been involved in law enforcement work have you had numerous occasions to investigate suspected criminal activity? A. Yes.

Q. Could you give us an estimate of about how many? A. No.

Q. You have no idea? A. That is right.

Q. Now, with reference to the events of September of 1967, starting with the recovery of a body on the Bernard Dombrowski farm, did you participate in any of the investigation of that discovery? A. Yes.

[670] Q Were you, in fact, the chief investigator and the head of the investigation surrounding that recovery? A. I just participated in my capacity.

Q. As Undersheriff of Fond du Lac County? A. Yes.

Q. Do you mean by that you were at all times directed and controlled by the orders of the Sheriff of Fond du Lac County? A. Yes.

Q. So he would more properly be described as the chief investigator of that investigation; is that right? A. Yes.

Q. Did you have occasion to visit the Bernard Dombrowski farm on the afternoon of September 12th, 1967? A. Yes, I did.

Q. And when you arrived at the farm, state whether or not you went to an area that has been variously described as a dump and/or picnic area? A. Yes.

Q. And while you were there, did you observe a body? A. Yes.

Q. Did you make other observations of the area surrounding where the body was? A. Yes.

Q. Would you tell us what observations you made? [671] A. We searched the area for different material.

Q. That's what you did; I asked what you observed? A. We observed where the campsite was — found the sock there; just made a general observation of the area.

Q. Can you state whether or not on the basis of your observations you saw any blood in the area where the body was? A. No.

Q. Based on that observation did you form any conclusion? A. No.

Q. Did you express any conclusion as to what the absence of blood at the scene meant to you? A. No.

Q. Do you have any opinion as to what that means? A. No.

Q. That meant nothing to you then I assume? A. No.

Q. You mean "No, it didn't"? A. No, it didn't.

Q. At that time it didn't. At some subsequent time did it? A. Later on.

Q. When? A. After we noticed the Dodge.

Q. When did you notice the Dodge? A. After we investigated the area there and went over by the farmhouse.

[672] Q. When you went over toward where the farmhouse is did you observe a Dodge? A. Yes.

Q. Did you look at the Dodge? A. Yes.

Q. Did you look into the Dodge? A. Through the windows, yes.

Q. Tell us what you observed in the Dodge? A. We observed—I observed the pillow case covering what appeared to be blood. You could see blood where it ran down off of the cushion and was beyond the coverage range of the pillow case. You could see blood on the briefcase on the floor; you could see blood splattered on the back of the front seat and on the side of the back seat of the car.

Q. Would you step down here a minute, Sheriff Howard? Could I call you Sheriff?

THE COURT: Call him Mr. Howard, please.

MR. LEICHTFUSS:

Q. These are State's Exhibits 41, 42, and 43. Would you show us what it is you observed on those exhibits that you have just testified to? A. This is Exhibit No. 41. This is the rear seat of the Dodge, and a pillow case was laid across this here area, and you could see this other area which has still got a substance of the blood on.

[673] Q. Well, when you say a pillow case covering that area, could you see the area you can see now? A. All except where the pillow case was.

Q. Bring that over here a minute, would you? Show us where the pillow case was? A. The pillow case laid in here like this — This area, this area where you could still see –

Q. You could see that area? A. Yes.

Q. And you do see down here, right? A. I could see here on down.

Q. From about here on down?

MR. LEICHTFUSS: Let the record reflect we have referred to half of the car seat with a diagonal crossing of some covering being over it, and the witness has described that he could see the half that was uncovered and a portion of the half that was covered.

Q. Now, Mr. Howard, can you show me on what is marked State's Exhibit 42 what it is that you observed in respect to there being blood? A. In the area right here, and here— The back seat.

THE COURT: Would you state for the record what area he designated?

MR. LEICHTFUSS: Designated by the witness, I believe, is fairly described as the back area of what is marked as Exhibit 42 for the State.

[674] Q. Referring to State's Exhibit 43, Mr. Howard, did you make any observations with reference to that? A. I did, but I didn't notice anything at the time on that.

Q. Can you state whether or not you had any way of telling the amount of blood that you observed or suspected of being blood that you observed? A. The amount?

Q. Yes. A. No.

Q. Can you state whether or not you had any way of telling how long the stains you observed had been present? A. No, not at that time.

Q. Now, in your investigation, Mr. Howard, can you state whether or not anybody had seen Mr. McKinney alive in the State of Wisconsin? A. No.

Q. You mean no, you can't? A. No, I can't.

Q. Did you investigate that aspect? A. Yes.

Q. And did your investigation turn up anything? A. No.

Q. Can you state whether or not your investigation showed where Mr. McKinney was when the bullet that was recovered from his head entered his head? [675] A. No.

Q. Did you investigate that aspect of it? A. No.

Q. Can you state whether or not your investigation showed where Mr. McKinney was when he died? A. No.

Q. Did you investigate that aspect of it? A. As much as we could.

Q. Can you state whether or not in your investigation you were able to describe the condition of State's Exhibits 41, 42 and 43 prior to September 12th, 1967? A. I didn't get that.

Whereupon the above question was read back.

THE WITNESS: No, I had no occasion to see the car before then.

MR. LEICHTFUSS:

Q. Did you investigate that aspect of it? A. Yes.

Q. And your investigation didn't turn up anything? A. Yes, it turned up things.

Q. You talked to people who had observed the car in its condition prior to September 12th, 1967? A. Yes.

Q. And were they able to describe for you the condition of State's Exhibits 41, 42, and 43? A. They advised us of certain things about it, yes.

[676] Q. And what day had they seen the car on? A. The morning of the 10th.

Q. And had they told you anything about the condition of the seats marked for identification as 41, 42, and 43 for the State? A. Yes, they didn't observe anything on the back seat.

Q. So, did you talk to anybody else about any observations as to the condition of State's Exhibits 41, 42 and 43? A. Yes, I believe we talked to the sergeant from the West Bend Police Department — when he was stopped down there, and he observed nothing in the back seat on Saturday night, September 9th.

Q. Who did you talk to besides that? A. Mr. Staege.

Q. Same Mr. Staege that testified here? A. Yes.

Q. When had he seen the car? A. When he pulled it in on Sunday, September 10th, when he took it to the farm.

Q. Can you state whether or not in your investigation you had occasion to talk to other neighbors in the area of the Bernard Dombrowski farm? A. I don't know.

Q. Well, did your investigation include that? A. Some of our men talked to the neighbors, yes.

Q. Can you state whether or not you asked anybody whether or not they had heard a noise on the morning of September 11th, 1967? [677] A. No, I didn't.

Q. Did any of your officers at your direction or the sheriff's officers do that? A. To my knowledge I don't know.

Q. Well, were you familiar with all of the details of the investigation that was being conducted, Mr. Howard? A. Most of them, yes.

Q. Did you learn of anybody that had heard a shot in the morning of September 11th, 1967? A. No.

MR. LEICHTFUSS: That's all, Mr. Howard; thank you.

CROSS-EXAMINATION By Mr. Semenas

Q. Mr. Howard, Mr. Leichtfuss asked if you came to any conclusions after you observed the body; I will ask you if you came to any conclusions after observing the body and observing the Dodge? A. Yes, with the blood there in the Dodge.

Q. What conclusions did you come to? A. That there wasn't any blood out by the scene because it was all in the Dodge.

Q. You stated there was an amount of blood, what do you mean? A. After I viewed the raincoat that was loaded with blood and the floor mat and the amount of blood after we pulled the car seat out that had run down into the framework of the car and so forth.

* * *

[678] Q. Based upon your observations of the body and the Dodge, what conclusions did you come to regarding this incident? A. That he was shot in the Dodge.

MR. SEMENAS: That's all the questions I have.

RE-DIRECT EXAMINATION By Mr. Leichtfuss

Q. Mr. Howard, when did you come to a conclusion as to when he was shot in the Dodge? A. No, I didn't come to a conclusion when he was shot in the Dodge.

[679] Q. You said you formed an opinion based on your observations that the man you saw in the dump area had been in the Dodge; is that correct? A. Yes.

Q. Were you able to determine the amount of blood that you observed or thought you observed in the Dodge? A. Between the Dodge and what I seen on the raincoat and the floor mats.

Q. Were those in the Dodge? A. No, not at the time – At the West Bend Sheriff's Department.

Q. On the basis of your observations of the Dodge, were you able to draw the conclusion that there was a lot of blood in the Dodge? A. Yes.

Q. And is part of your opinion based on the raincoat and floor mat that you refer to? A. Also that, yes.

Q. You didn't see those at the Dodge, did you? A. No.

Q. Can you tell us what you mean by a lot of blood? A. A lot of blood covering the raincoat; it was just about completedly soaked, and the same way with the floor mats. The towel was still wet, and the pail at the West Bend Police Department —

Q. When did you observe those items at the West Bend Police Department? A. On the night of the 12th.

[680] Q. Do you remember what time? A. Yes, it was before 10 o'clock. I also know when I opened the door of the Dodge there was still wet on the back seat.

Q. Did you observe any blood on the ground around the Dodge? A. No. There was on a black tie laying by the Dodge and some on a match case.

Q. Where is that black tie today, do you know? A. No, I don't know.

Q. Know where the match case is? A. A book of matches laying by the front door that had blood on.

Q. Do you know where that is today? A. I believe all at the Crime Lab or — They had them.

Q. They did have them though? A. Yes.

MR. LEICHTFUSS: That's all.

* * *

TESTIMONY OF KENNETH E. SUNDBERG, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County Court.

[357] KENNETH E. SUNDBERG, called as a witness on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

* * *

[359] Q. Were you in the Fond du Lac area on Tuesday, September 12th, 1967? A. Yes, I was.

Q. Do you recall what time of the day on Tuesday, September 12th, 1967 you were in the Fond du Lac area? A. As I recall I was up here on a field unit run from the laboratory in the evening, I believe — I left approximately 4:30 from the laboratory and arrived up here around 7:00 o'clock.

Q. Do you know where you went?

* * *

THE WITNESS: Went out to a farm, which I was not familiar with, and we were escorted out to the scene or to the locale.

MR. SEMENAS:

Q. What do you mean by "we"? A. The others — Cleon Mauer who was the Lab representative, and I was accompanying him for the purpose of taking photographs.

[360] Q. And do you recall approximately what time you arrived at the farm on September 12th, 1967? A. As I recall, it was about 7:20 or 7:25, something like that, in the evening. It was getting dusk.

Q. What did you observe when you arrived at the farm on September 12th, 1967?

* * *

A. We observed a male body on, I believe you would describe it, a dump or an area where there was a lot of trash that had been thrown.

* * *

TESTIMONY OF CLEON MAUER, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County Court.

[380] CLEON MAUER, called as a witness herein on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

* * *

[383] Q. Were you in Fond du Lac County on official business on Tuesday, September 11th, 1967? Strike that. September 12th that date should be. A. I was in Fond du Lac County on the 12th of September of 1967, on official business.

Q. When did you first come into Fond du Lac County on Tuesday, September 12th, 1967, for official business? A. At approximately 7:20 hours in the evening.

Q. Where did you go? Where did you go when you came into Fond du Lac County? A. I was escorted to a location by Deputy Harold Smet.

Q. Do you know where you were escorted to? A. Yes.

Q. Where were you escorted to? A. I was escorted to a field located in Auburn, Township of Auburn, north of County Trunk S near County Trunk G.

Q. Do you know any communities located in the general area? A. Kewaskum in Washington County.

Q. Now I show you Defendant's Exhibit 18, and would you look at that and tell us your route of travel to the place you went to on official business?

THE COURT: Are you so concerned about the route or the location?

MR. SEMENAS: I would just as soon have him show the route.

THE COURT: All right.

[384] THE WITNESS: I entered Fond du Lac County on County on County Trunk S coming from the direction of Kewaskum. At the junction of where County Trunk S turns to the right and County Trunk G continues on I turned right, and I went down this Country Trunk S a short distance, and the scene was pointed out to me, and we went to a location north of County Trunk S. This map here shows this area to be "C & B Dombrowski."

MR. SEMENAS:

Q. What did you observe when you first arrived at this scene that you related to show on the map to be the "C & B Dombrowski" farm or on the plat? A. When I arrived at this area, it was being guarded at the time by Deputies Jurgensmier and Huck. At this time, these deputies escorted me to a ravine area where I observed a body laying on a pile of what appeared to be a trash dump.

Q. Did anyone accompany you on your trip to this area? A. They did.

Q. Who was that? A. That was Mr. Kenneth Sundberg, a photographer from the Crime Laboratory.

Q. Who was in charge of your field unit? A. On this occasion I was.

* * *

[407] Whereupon, State's Exhibit No. 32 was marked for identification — Section of a floor mat.

Q. I have handed you, Mr. Mauer, State's Exhibit No. 32 for identification. Can you identify it? A. I can.

Q. What is it? A. Exhibit marked No. 32 consists of two plastic bags — one of which contains a section of floor mat; the other sealed bag contains a paper bag and is the bag in which I placed this section of floor mat at the time I recovered it from a 1960 2-door blue Dodge, bearing license number LB-428, Illinois, 1967.

MR. LEICHTFUSS: Are you reading now?

THE WITNESS: I am not.

A. (Continuing) I recovered this section of floor mat from the rear floor of that Dodge on the 13th of September of 1967.

* * *

[408] Whereupon State's Exhibit 33 was marked for identification — Attache case.

Q. Mr. Mauer, now I show you what has been marked as State's Exhibit No. 33 for identification and ask you if you can identify it? A. I can.

Q. What is it? A. Exhibit marked No. 33 is a sealed plastic bag containing a brown leather attache case and a brown paper bag. The brown paper bag is the bag in which I placed the attache case at the time I recovered it from the previously mentioned vehicle.

* * *

[410] Whereupon State's Exhibit 34 was marked for identification — Floor Mat.

Q. Mr. Mauer, now I show you what has been marked as State's Exhibit 34 for identification. Can you identify it? A. I can.

Q. What is it? A. Exhibit No. 34 is a sealed plastic bag containing a front floor mat and a brown paper bag. The brown paper bag is the bag in which I placed this floor mat at the time I recovered it from the previously described automobile on the 13th of September, 1967, at the Fond du Lac County Sheriff's Garage.

* * *

[414] Whereupon State's Exhibit 37 was marked for identification — white sock.

Q. Mr. Mauer, I show you what has been marked as State's Exhibit 37 for identification and ask you if you can identify it. A. I can.

Q. What is it? A. Exhibit marked No. 37 is a sealed plastic bag containing a white sock and a brown paper bag. The brown paper bag was the bag in which I placed this white sock at the time I recovered it on the 13th of September of 1967 from the previously described automobile.

* * *

[419] MR. LEICHTFUSS:

Q. Mr. Mauer, you said that you arrived in Fond du Lac County on the afternoon of the 12th of September, 1967; is that correct? A. I arrived at approximately 7:20 hours in the early evening hours of 12 September 1967.

Q. And you testified that you were escorted out to an area that you described as a farm area; is that right? A. That is correct.

Q. When you arrived there, did you park your truck or van or whatever you were driving? You parked it when you got there? A. I did.

Q. Did you park it? A. Just outside an enclosure; it appeared to be a fenced area; I parked it just outside of that area.

Q. Now, you said that you, yourself, made some recoveries from a car out in the farm area; is that true? A. No, sir.

Q. You did not yourself make any recoveries from a car in the farm area? A. I did not.

[420] Q. What about State's Exhibit 32, the section of floor mat? (Mr. Leichtfuss picks up State's Exhibit 32). I show you what has been marked for identification purposes as State's Exhibit 32; didn't you testify, Mr. Mauer, that you yourself recovered that from a 1960 Dodge, license number LB-428? A. I did.

Q. Well, what is the fact, did you recover that yourself? A. I did.

Q. When you recovered that piece of floor mat, Mr. Mauer, did you have authority to search that car? A. I did.

Q. What authority did you have? A. I was acting in the capacity of the Sheriff's Department of Fond du Lac County.

Q. So at the time you made the recoveries that you have described for us, it is your position you were acting in the capacity of a deputy sheriff of Fond du Lac County; is that right? A. I was assisting the deputy — the Sheriff's Department of Fond du Lac County.

Q. Your authority was as good as the department's only; isn't that true? A. That is true.

Q. Now, these items that you recovered, were they listed and attached to a search warrant of any kind? [421] A. Not to my knowledge.

Q. Did the Sheriff of Fond du Lac County know the items that you were recovering? A. A receipt was issued to the Fond du Lac County Sheriff's Department.

Q. Do you know of any reason why that was not attached to the search warrant? A. I do not know why.

Q. Now, Item 33 that you have described was an attache case; you also recovered that from the car, did you not? A. I did.

Q. Item 34 was a floor mat; did you also recover that, sir? A. There was more than one floor mat involved; I don't recall exactly which floor mat it was or—

Q. I will see if I can find it over here. (Mr. Leichtfuss picks up State's Exhibit 34). Did you recover that? A. I did.

Q. And you put it in that plastic bag as you did all the other exhibits that you recovered; isn't that right? A. I placed the floor mat in this paper bag which is contained within the plastic bag.

Q. You did not put them in the plastic bag they appear in now, however? A. I did not.

[422] Q. But you did recover this? A. I did.

Q. And again under the same authority that you have described to us? A. Yes.

Q. Was any search warrant ever shown to you, Mr. Mauer? A. I don't recall at the present time of actually seeing one; I was informed one had been issued.

Q. Didn't you ask to see one? A. No, sir.

Q. You made a notation that one was in existence? A. No, sir.

Q. I show you what has been marked for identification as State's Exhibits 37 and 36 — Those are two white socks, are they not? A. They are.

Q. You testified, I believe, that you found those out in the area of this farm that you were on; is that true? A. I recovered one of these items from the farm area.

Q. You recovered one? Which one? A. The one designated Exhibit 37.

Q. That was one that you recovered? Where did you find that, Mr. Mauer? A. Excuse me; Exhibit 36 is the one which I recovered at the farm area. Exhibit 37 is the one I recovered from the Dodge vehicle.

Q. You recovered from a Dodge vehicle Exhibit 37? A. I did.

[423] Q. Where did you find Exhibit No. 36? A. Exhibit 36 was at this farm scene.

Q. So you mean this area of this farm that you were on? A. The area which I previously described and referred to as the scene.

Q. You say— What caused the confusion in your mind? What marking are you referring to as to where one was found as compared to the other? A. I have indicated here a "P" designation — "turned over to Mr. John Linssen" and I have it marked as a white sock recovered on the 13th of September 1967.

Q. What do you have on State's Exhibit 37 for identification? A. 37 states a "white sock" recovered— However,

I do not have an Item "P" on it — and it contains the marking of Daniel Dowd.

Q. Did you give that to Mr. Dowd? A. I did.

Q. He never returned it to you, did he? A. No, sir.

Q. Where was this 1960 Dodge when you looked at it, Mr. Mauer? A. It was located in the Fond du Lac County Sheriff's Garage.

Q. So the 1960 Dodge you refer to as far as you know was only in the Fond du Lac County Sheriff's Garage; it was not at the farm, was it? A. I only saw it, observed it, at the Fond du Lac County Sheriff's Garage.

[424] Q. And that was on the 13th of September, 1967? A. Yes.

Q. Now, who was present in the Fond du Lac County Sheriff's Garage, Mr. Mauer, when you conducted your search of this car? A. I was there, Mr. Kenneth Sundberg was there, Deputy Sheriff Ray Howard was present, and there were others, but I do not know who those individuals are.

Q. Did you make notes of who the others were? A. Of all of them I did not.

Q. Now, isn't it customary for you to ask to see the authority by which you are searching a car? A. Not generally, no.

Q. Not generally? You do not usually ask to see that; is that it? A. I do not.

Q. You are solely directed by the Sheriff of the county who is telling you what to do? A. The Sheriff of the county in a case involving assistance to the particular county; if

the Sheriff or his representative advises me that a search warrant has been issued, then I accept that man's word at the time.

Q. And in partaking of that search warrant, you made out a receipt of the items that you recovered; is that right? A. I issued a receipt for the items that were recovered.

Q. Do you have a copy of that receipt with you? [425] A. I believe there is a copy attached to one of those reports; whether it is complete in its entirety I am not certain.

Q. Is this the report to which you have reference? (Report handed to the witness) A. It is.

Q. Do you want to take a moment and tell me if that is complete? (Witness goes through the report). A. Inasmuch as this receipt ends with the laboratory designation of AP, I do not know what the item AQ was; therefore, I cannot say if this is complete as to all of the items recovered from that particular vehicle.

Q. When was that receipt prepared, Mr. Mauer? A. I don't know when this was prepared.

Q. Did you prepare it? A. No, I did not.

Q. You are the one that recovered the items? A. I did.

Q. Isn't it customary for the one who recovers the item to prepare the receipt? A. The receipt?

Q. You can answer that "Yes" or "No." A. Not always. Not always in its entirety.

Q. Did you prepare any part of this receipt? A. I did not prepare any part of that receipt.

Q. Now, this receipt does not indicate any exhibits were returned, either, does it? A. It does not.

[426] MR. LEICHTFUSS: Does the Court record have the search warrant for the 1960 Dodge?

(Said search warrant handed to Mr. Leichtfuss)

Q. I show you what is part of the Court record here, Mr. Mauer, which is the return of the officer in the search of the 1960 Dodge, and I ask you to take a moment and look that over. Are those items listed in the receipt that is attached to your report? A. Some of these items may be on that receipt, but they are not in the area there that I indicated up to AP.

Q. You mean you didn't see them here or— Do you want to look at this? Maybe that will help. A. Some of the items contained in this endorsement of warrant are contained on the receipt form attached to this particular report.

Q. But they aren't all listed, are they? A. I don't know inasmuch as this report does not go straight through the alphabet in designating the items.

Q. My question is that they are not all listed? A. Based on the information I have would— No, they aren't.

Q. The information you have is your report, isn't it? A. My report is based upon the examinations which I conducted; I had no control over the receipt that may be attached to it in this particular case.

[427] Q. Even though you are the one that recovered the items? A. The items which you have just referred to me I did not recover.

Q. You search the Dodge, didn't you? A. I did.

Q. That's the items I just showed you on that warrant, weren't they? A. They are not the items which I recovered.

Q. Were you present when those were recovered? A. I was not.

Q. Do you know when they were recovered? A. I do not.

Q. But that's the warrant under which auspices you say you were conducting your search? A. I don't know.

* * *

[556] MR. SEMENAS:

Q. Mr. Mauer, would you look at State's Exhibit No. 41 for identification? (Witness does so). Can you identify it? A. I can.

Q. What is it? A. Exhibit marked 41 is the seat which I removed from a 1960 Dodge at the Fond du Lac County Sheriff's Garage on the 13th of September of 1967.

Q. Which seat is that? A. It appears to be the back seat.

* * *

[557] Q. Now, Mr. Mauer, would you look at State's Exhibit No. 42 marked for identification, and I ask you now if you can identify it? A. I can.

Q. What is it? A. Exhibit marked 42 is the front seat of a vehicle which I removed from a 1960 Dodge parked at the Fond du Lac County Sheriff's Garage on the 13th of September of 1967.

* * *

Q. And I will ask you to look at State's Exhibit No. 43 for identification, and I ask you, after you look at that, to tell me if you can identify it? A. I can.

Q. And what is it? A. Exhibit marked 43 is the back rest which I removed from a 1960 Dodge in Fond du Lac County on the 13th of September, 1967.

* * *

[564] RE-CROSS-EXAMINATION By Mr. Leichtfuss

Q. Mr. Mauer, when you removed State's Exhibits 41, 42 and 43 from the 1960 Dodge that you refer to, did you actually remove them yourself? A. I did not.

[565] Q. So you didn't remove them? A. Personally I did not remove them.

MR. LEICHTFUSS: That's all; thank you.

RE-DIRECT EXAMINATION By Mr. Semenas

Q. Mr. Mauer, were you present when these seats were removed? A. I was.

Q. State's Exhibits 41, 42, and 43? A. I was.

Q. And who supervised the removal of these seats? A. I did.

* * *

TESTIMONY OF PATRICK WHEALON, from Exhibit C, Transcript of Proceedings of Trial in Fond du Lac County Court.

[457] PATRICK WHEALON, called as a witness herein on behalf of the State, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Semenas

Q. Would you please state your name? A. Patrick Whealon.

Q. And where do you live? A. 34 Algoma, Fond du Lac.

Q. And what is your occupation: A. Part-time service station attendant and wrecker operator at Olsen's Service Station.

Q. Were you a part-time wrecker operator for Olsen's Service Station on September 12th, 1967? A. Right.

Q. Do you recall what hours you were on duty on September 12th, 1967? A. I came in that day about 5:30 and worked until almost midnight that night.

[458] Q. Did you have an occasion to go to the Kewaskum area on the evening of September 12th, 1967, while you were wrecker operator? A. Yes, we were called by the dispatcher on duty at the Safety Building to go out to County Trunk G & S and pick up a 1960 Dodge car for the Sheriff's Department.

Q. Did you go out there? A. Yes, I did.

Q. And what did you observe when you first arrived out there? A. Well, I got there and had to wait a little while. We went to this farm in the yard near the barn, and, at the orders of the Sheriff, we picked up this car and hauled it into Fond du Lac.

Q. Do you recall what type of car this was? A. 1960 Dodge, Illinois plates, blue.

Q. Do you recall the license number? A. I don't recall the number.

Q. Where did you haul this 1960 Dodge to? A. The Safety Building Garage behind the Safety Building.

Q. Do you recall what time you arrived at the Safety Building approximately? A. Oh, must have been close to 10:00 o'clock.

Q. Now, I show you Defendant's Exhibit No. 18 and ask you to look at that and tell us your route of travel in response to this call to go to that farm, if you can recall? [459] A. We went out Highway 45 to County Trunk Double S, and then we—County Double S to D, and we took D to County Trunk G and turned to the south, and went on G until we got to the G&S intersection, and then we went just past County Trunk S where S turned to go to New Fane, just past there to the farm, and then went, of course, in the driveway back next to the barn.

Q. Now, I show you State's Exhibit No. 16 for identification—

THE COURT: It has been received.

MR. SEMENAS:

Q. I show you State's Exhibit 16 and ask you to look at that a minute. Mr. Whealon, now I ask you is that a reasonable representation of the area that you responded to and received a call to go to on the evening of September 12th, 1967? A. Yes, it is just exactly where the car was parked in relation to the barn and the machine shed and the chicken coop.

Q. Mr. Whealon, after you were directed to this farm and to the location of the car, would you tell us what you did? A. Well, I contacted the Sheriff when I got out there. He was at the site of where the body was, and I contacted him, and then the Sheriff and the Undersheriff and the Coroner went with me to this automobile and we picked up the car at that time and brought it into the Safety Building.

Q. And after you brought it to the Safety Building, where did you leave it there? A. Locked up in the garage.

[460] Q. What portion of the garage? A. It was parked in the next stall to the ambulance in the Safety Building Garage.

Q. Which side of the Safety Building is that located on? A. North side of the Safety Building — County side of the Safety Building.

MR. SEMENAS: That's all the questions I have; however, I would like to re-call him later.

THE COURT: Do you have any cross-examination?

CROSS-EXAMINATION By Mr. Leichtfuss

Q. Mr. Whealon, what time did you receive this call that you referred to on the 12th of September, 1967? A. I would say it was about 7:30.

Q. P.M? A. Yes.

Q. So you were acting in response to a telephone call that you had received at 7:30 p.m? A. Right.

Q. Did you then immediately leave for the area that you have described? A. Within the next five minutes, or time to get the truck ready.

Q. What time did you get there? A. Oh, about, must have been about quarter after eight or [461] in that neighborhood.

Q. And when you arrived there did you see the Sheriff? A. Right.

Q. Did you see Deputy Sheriff Howard? A. Right.

Q. Did you see Mr. Decker? A. At that time I think Mr. Decker had gone into Kewaskum, if I am not mistaken.

Q. You didn't see him? A. Not right at that moment.

Q. You are sure you saw the Sheriff and Undersheriff at the time you arrived though? A. Right.

Q. And that was 8:15 p.m.? A. Approximately; I didn't look at my watch, but it was in that neighborhood, give or take 15 minutes.

Q. So you arrived, let's say, sometime between 8:00 p.m. and 8:30? A. I would say so.

MR. LEICHTFUSS: That's all, Mr. Whealon; thank you.

MR. SEMENAS: That's all the questions I have.

* * *

The following portions of testimony at pretrial motions, which are considered by petitioner to be unnecessary under Rule 36 (3), are printed at the request of the respondent, although they are not a part of the record on file with the District Court and not a part of the record filed with this Court.

SUPPLEMENTAL TESTIMONY OFFERED IN SUPPORT OF DEFENSE MOTIONS, TUESDAY, JUNE 4, 1968, FOND DU LAC COUNTY COURT

[2] RAYMOND J. HOWARD, called as a witness herein on behalf of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Leichtfuss

* * *

[7] Q. And did you go onto the farm's property? A. That is right.

Q. Did you at that time know of your own personal knowledge who owned the farm? A. I knew; the Washington County authorities told me, yes.

Q. You were relying on what they had told you for your information at this point in time? A. That is right.

Q. Now, at the time you appeared at the farm and went on the premises did you have a warrant of arrest for this defendant? A. No.

Q. Did you have a search warrant? A. No.

Q. Did you look over all of the farm premises while you were there at this time? A. No.

Q. Did you observe a 1960 Dodge at any place on these premises? A. Yes.

Q. Was that located somewhere near the farm buildings and the farm home on those premises? A. Located near the barn.

Q. Did you go up to that automobile? A. That is right.

Q. Did you look into the automobile? A. Yes, I did.

[8] Q. Did you have a warrant of arrest for this defendant? A. No.

Q. Did you have a search warrant at that time? A. No.

Q. Do you recall what time of the day this was? A. Oh, I imagine it was about four o'clock — somewheres in there — between three and four.

Q. How long did you remain on the farm premises altogether? A. I wouldn't have any idea.

Q. Well, can you give me an approximation? A. I would say I was going and coming — going and coming back again; I imagine I would have been there about four hours total.

Q. Would this all be prior to 8:02 p.m. September 12th, 1967? A. No.

Q. How much of that time would be prior to 8:02 p.m. on that date? A. Oh, I would say about three hours.

Q. Now, when you testified in Judge McEssy's court on that evening were you asked this question and did you give this answer?

THE COURT: What page?

MR. LEICHTFUSS: I am on Page 2, Your Honor, of the testimony attached to the search warrants. For the 1960 Dodge I am reading from Page 2, bottom of the page.

[9] QUESTION: Why do you want to examine this automobile or search it?

ANSWER: Because a man by the name of Chester Dombrowski had an accident just south of the Fond du Lac County line last night in which Washington County arrested him for drunken driving; and in so arresting him, they searched the car, and they found the floormat from the back of a Dodge car filled with blood and a raincoat, and a combination penknife and letter-opener; and while questioning the subject in Washington County, he demanded an attorney and said he would then give a statement. Afterwards, he would not give a statement, but the attorneys made remarks that there would be a body found on the brother's farm, which is located in Fond du Lac County.

MR. LEICHTFUSS: Were you asked that question and did your give that answer?

THE WITNESS:

A. That sounds like my anwer, yes.

Q. Now, Officer Howard, does that answer contain any information when you had personal knowledge of, or were you relying completely on information you had received from the Washington County authorities? A. That information was relied on my personal observations and information from the Washington County authorities, and at that present time, the defendant's attorney.

Q. Well, with reference to the arrest of the defendant for an accident south of the county line and the charge of drunken driving, were you relying on information given to you by the Washington County authorities? A. Yes.

[10] Q. With reference to the search they conducted and the items they claimed to have found in that car, were you relying on the information they gave to you? A. Yes.

Q. The statement about the questioning of the subject in Washington County and his demand for an attorney, was that your questioning of the defendant? A. No.

Q. Were you again relying on information furnished to you by Washington County authorities? A. Yes.

Q. When you say afterwards he would not give a statement, were you relying on your own information or that given to you by the Washington County authorities? A. I don't recall if it was mine or theirs.

Q. With reference to attorney's remarks and the fact a body would be found on the brother's farm which is located in Fond du Lac County, were those remarks by an attorney made to you? A. No.

Q. So you were relying again on information furnished to you by Washington County authorities; is that true? A. That is right.

Q. So reference to this entire answer, you were relying on information furnished you by the Washington County authorities; isn't that true? [11] A. All except what I seen in the 1960 Dodge.

Q. There is nothing in this answer I read to you, Officer Howard, that relates to contents in the 1960 Dodge? I am talking about that one answer now. A. No.

Q. You may check it if you wish. (Transcript handed to the witness). Did you at any time prior to applying for this search warrant check the ownership of that farm personally? A. No.

Q. So when you say that the farm is located in Fond du Lac County you were relying again on somebody else's information; is that correct? A. That is right.

Q. Now, with reference to the location of the 1967 Ford Thunderbird, did you know where that was located at the time you were applying for this search warrant? A. Yes.

Q. You knew it was not located in Fond du Lac County I take it? A. Yes.

Q. But you had not seen the vehicle? A. I don't recall whether I stopped and looked at it or didn't before I came up here. I was running between the farm and West Bend.

[12] Q. Did you at any time check with either the defendant or any other member of the Dombrowski family and ask their permission to go on the farm premises? A. No.

Q. Did you know who owned the 1960 Dodge parked on the farm premises? A. No.

Q. Did you know who owned the 1967 Ford Thunderbird when you applied for the search warrant? A. Yes.

Q. Did you know by information you gained yourself or told to you by somebody else? A. I had seen the rental contract.

Q. Where had you gotten that from? A. Washington County Sheriff's Department.

Q. They turned that over to you? A. No, but I was shown it.

Q. They had retained custody of it but let you read it; is that right? A. That is right.

Q. At any time when you were present prior to the issuance of a search warrant, did the defendant make any request or demand of you? A. No.

Q. Did you search the 1960 Dodge vehicle located on the farm premises prior to Officer Sondergard applying and receiving [13] a search warrant to search the premises? A. Did I search the Dodge before he? Yes.

Q. In other words, you went on the premises and searched the Dodge prior to the time he had a search warrant for the premises; is that right? A. That is right.

Q. Was the Wisconsin State Crime Laboratory on the premises prior to your obtaining these search warrants? A. That I can't say.

Q. Did you ever obtain a search warrant to search the premises for a body? A. No.

Q. When did you go out to the 1960 Dodge with your search warrant, Officer? A. Right after we left the court room.

Q. That evening? A. Yes.

Q. Did you make your return to the court that evening, or when did you make your return to the court? A. Return was made by the Sheriff, I believe and I wasn't there when he made the return. . .I made the return, yes. It said "Sheriff," and they changed it, and I made the return.

Q. Do you recall what time of the day on the 13th of September, 1967, you made that return? A. 8:15.

[14] Q. In the morning? A. I don't remember what time of the day I made the return off hand.

Q. When was the car, the 1960 Dodge, removed from the farm premises? Do you recall that? A. Yes, that same night that I made the search.

Q. At what time? A. I wouldn't know because I was in West Bend at the time the wrecker got there and took the 1960 Dodge.

Q. Were you in West Bend for purposes of executing the search warrant for the 1967 Ford Thunderbird? A. Yes.

Q. You searched the 1960 Dodge before searching the Thunderbird? A. Yes.

Q. Now, in searching the 1960 Dodge, the items you obtained are listed in your return; is that correct? A. (No answer).

Q. I show you the search warrant and return attached thereto that has reference to the 1960 Dodge; is that your signature, "Raymond Howard"? A. Yes.

Q. Did you fill the date in — the 13th of September, 1967? A. No.

* * *

[15] Q. Was it dated on the same date you signed this document? A. Yes.

Q. Were those items listed there the items you found in the search of the 1960 Dodge? A. Yes.

Q. Now, you did not find books of matches partially burned and a fresh pile of straw in the car, did you? A. No.

Q. Those, in fact, were found outside of the car on the premises; is that correct? A. Right.

Q. And the necktie also was found outside the car on the premises? A. That is right.

Q. Those items, in fact, were not found within the car, were they? A. No.

* * *

[21] Q. When you applied for the search warrant to Judge McEssy, did you tell him specifically what you were looking for in the 1960 Dodge? A. Yes, I told him there was—that there was something covered up on the back seat.

Q. Is that in this testimony here? A. I don't believe it is.

Q. You mean you told him things that are not recorded in this testimony that is attached to the warrant? A. Well, I told him that — I don't see it here in the testimony — but I remember telling him that through the car windows we could see blood on the back seat and so forth.

* * *

[26] DANIEL R. SONDERGARD called as a witness herein on behalf of the defendant, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION By Mr. Leichtfuss

Q. Would you state your name sir? A. Daniel R. Sondergard.

Q. What is your employment? [27] A. Fond du Lac County Traffic Officer.

Q. Were you so employed in that capacity on September 12th and 13th, 1967? A. Yes, sir, I was.

Q. Did you have occasion on the 13th day of September, 1967, to appear before the Honorable H. W. McEssy, County Judge, Fond du Lac County? A. Yes, sir, I did.

Q. Would I be correct in stating you appeared about 9:35 a.m. on the morning of September 13th, 1967? A. That's the approximate time, yes, sir.

Q. At that time were you requesting that a search warrant be issued for certain premises? A. Yes, sir, I was.

Q. Now, you had been on those premises, I believe, previously to that time, had you not? A. Yes, sir, I was.

Q. When was that? A. The afternoon and evening of September 12th, 1967.

Q. Can you tell us between what hours you were on those premises on September 12th, 1967? A. Not continuously, but between the hours of approximately 3:00 and 11:00 or 12:00 p.m.—the greater portion of the time.

Q. Now, during the course of your being on the premises on that date, did you have occasion to look into a [28] home that you had believed to be owned by C. Dombrowski or B. Dombrowski? A. Yes, sir, I did.

Q. Did you know who owned the farm at that time? A. I was informed by the people who were living in it.

Q. All the information you had was information you had received from the people who were living in that farm with reference to the ownership of it; is that right? A. That is correct, yes.

Q. Now, did you, in fact, participate in the search, and did you yourself find a body on the farm on September 12th, 1967? A. Yes, sir, I did.

Q. Was that as the result of the search you were participating in? A. Yes, sir, it was.

Q. Did you have a search warrant? A. I had none;

* * *

Q. So the answer to my question is that you had none? A. No, I had none.

[29] Q. Did you have a warrant for the defendant's arrest? A. At what time?

Q. At the time you found the body? A. No, sir, I didn't.

Q. You say you personally found the body; is that correct? A. That is correct.

Q. What time of the day was that? A. I would say approximately 3:00 or shortly after 3:00 in the afternoon — 3:00 or 3:30 p.m.

Q. Approximately how many hours thereafter did the Wisconsin State Crime Laboratory arrive? A. At the time of the arrival I wasn't at the scene.

Q. Were they there when you returned to the scene? A. Yes, sir, they were.

Q. What time was that? A. I couldn't give you the exact time. I wouldn't know.

Q. Give me your best estimate? A. I believe it would be sometime in the area of — oh, 6:30 to 8:00 o'clock.

Q. P.M. on the date of September 12th, 1967? A. Yes, sir.

Q. Did you call them to come over to the farm? A. I didn't call the Crime Laboratory personally, no, sir.

Q. Now, in requesting— Were you directed to request a search warrant on September 13th, 1967? Did somebody direct you to go before Judge McEssy to get a search warrant for the premises? [30] A. I couldn't truthfully say if I was directed. I looked in the building and I saw these things; if I was directed, I couldn't tell you who did it.

Q. When you say you saw these things, and with reference to that statement, and referring to Page 1 and 2, Your Honor, of the testimony attached to the search warrant for the farm, etc., the last question on Page 1, were you asked this question and did you give this answer:

THE COURT: I just handed Mr. Sondergard the original transcript.

MR. LEICHTFUSS: Then I will withdraw that question and rephrase it this way, Your Honor, if I may.

Q. On page 2 with reference to your answer at the top of that page, Officer Sondergard, does that describe the observations you made through the window of the farm building on the premises you described as being owned by either C. Dombrowski or B. Dombrowski? A. Yes, sir, it does.

Q. And those observations were gained by you sometime in the afternoon of September 12th, 1967; is that correct? A. The afternoon and evening.

Q. Now, with reference to the results of your search, Officer, you made a return, did you not? A. Yes, sir, I did.

Q. And that return is affixed to the warrant that you have before you there? A. If it is, I can't see it. (Witness looks over document).

[31] Q. Is that your signature? A. Yes, it is.

Q. You signed that on what date? A. The return?

Q. Yes, sir. A. That would have been on the 15th.

Q. Even though it is dated the 14th? A. Yes, sir. I had 48 hours to return it.

Q. You were directed to search forthwith, were you not? A. Yes, sir, I was; they gave me 48 hours to make a return on the search warrant.

Q. The warrant says "You are commanded to search said premises," — A. That's what we did, yes.

Q. You immediately, upon receiving the warrant, searched the premises? A. After when we got to the farm, yes.

Q. What time did you arrive at the farm on that date?

THE COURT: After the warrant?

MR. LEICHTFUSS: Yes, sir, I am sorry — After the warrant issued by Judge McEssy, did you immediately go back to the farm with the warrant?

THE WITNESS:

A. I would say it was roughly 10:30 or so when we got there.

Q. At that time had the 1960 Dodge been removed? A. Yes, sir it was.

* * *

CERTIFICATE OF SERVICE

I, the undersigned, a member of the Bar of this Court, do hereby certify that on January 23, 1973, I duly mailed three copies of Appendix to counsel for the respondent, addressed as follows:

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